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CRIMINOLOGY

BY

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PREFACE

This book is the result of twenty years of teaching college classes in criminology. It has grown out of the experience of the author in academic work, supplemented by visits to and observation of many penal institutions and by conferences with a considerable number of workers in the field of criminology and penology. Special emphasis is placed upon the social responsibility for crime, and it is pointed out that the sociological, as well as the individual, approach must be used if there is to be any real hope for the solution of the crime problem.

The author is indebted to many persons for his materials, and he has tried to indicate the sources of his information in the footnotes. Specific acknowledgment should be made to Professors E. H. Sutherland and J. L. Gillin. The author has used their books in his classes ever since they were published, and his work has been largely influenced by them. In the studies of penal administration he has been aided by Paul W. Garrett and William B. Cox of the National Society of Penal Information, and by the Handbooks published by the Society. The writings of Dr. George W. Kirchwey, Professors E. W. Burgess, C. A. Ellwood, H. E. Barnes, and S. A. Queen have been used, and Professors Burgess, Ellwood and Barnes have given the author permission to quote from their published works. *The Journal of Criminal Law and Criminology*, *The Survey*, *The Boston Evening Transcript*, *The Outlook*, and *The Literary Digest* have given permission to reprint or quote from articles published by them. Alfred A. Knopf, Inc., have allowed quotation from "*The Child in America*" by W. I. and Dorothy S. Thomas.

Professor E. B. Reuter has read the entire manuscript and has made many helpful suggestions. The author is also indebted to Dean Chester A. Phillips of the College of Commerce of the State University of Iowa for clerical assistance in the preparation of the manuscript. Miss Doris M. Lorden compiled the index.

The author realizes that he has been assisted by many persons besides those specifically mentioned. To all those who have made this volume possible the author extends his heartfelt thanks.

Fred E. Haynes.

Iowa City, Iowa,
March, 1930.

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CRIMINOLOGY

CHAPTER I

SOCIAL RESPONSIBILITY FOR CRIME

Some years ago a well-known psychologist compared crime to the morphine habit acquired by the use of the drug in a hospital.

> "Organized society injected it into his system—a small dose only, but enough to make the craving for it irresistible, and when it had grown to ruinous proportions society was ready to despise and to condemn him. This diseased passion is a symbol of the crime that fills the countries of the globe. No man is born a criminal. Society gives him without his will the ruinous injection, of course, a small dose only, and despises him if the injected instinct grows, and when it has destroyed the whole man, then society goes heroically to work with police and court and punishment. It is nearly always too late—to prevent that first injection would have been better than all the labor of the penitentiaries."[1]

A boy was brought before the police court in Chicago for stealing watermelons. In answer to a question by the prosecuting attorney, he declared that "us fellows stole a melon to celebrate with. I'll bet there ain't a man in this court that ain't stole melons when he was a boy." Turning to the judge, he said, "Didn't you ever steal a melon, your honor?"

The sudden question startled the judge and provoked a smile in the jury box. "Well, ah-er- I don't know but that I did," he said. The boy replied, "Well, I know you did, too. And so did every man in the jury. Maybe they didn't get caught at it. I did."[2]

Adventure in the country becomes crime in the city and the adventurer, if caught, becomes the so-called "accidental criminal." The majority of young people get into trouble in their search for amusement. The small parks and field houses in Chicago have reduced delinquency in their neighborhoods.

George Whalen is one of the most expensive investments that the state of New York ever made. In the fifty-two years of his life he has cost the tax payers about $20,000. Ever since 1879, when he was arrested for the first time, he has been spending short terms in prison, mainly for burglary. Ten years ago, when he began a new term of prison life, he had served twenty-five years in prison and was still a burglar.

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[1] Munsterberg, "On the Witness Stand," pp. 232–233, Doubleday, Doran & Company, 1900.

[2] Lee, "Play in Education," p. 228, The Macmillan Company, 1915.

If this were an exceptional case it would attract a great deal of attention and every one would say, "We must never make a mistake of that kind again. It costs too much." But Whalen's case is common. It is duplicated in every state in the Union.

George Ferguson, who was seventy-one in 1924, began in that year his third term in Sing Sing, his twenty-fifth term in prison. He was convicted of burglary and sentenced to serve six years and six months. His prison record started at Joliet, Illinois, in 1869 and since that time he had had only six years of freedom. The first offense of which he was convicted was assault. Since then he has served terms for larceny, burglary and robbery in fourteen institutions in New York, New Jersey and New England.

"Guilty, I s'pose," remarked Roy Devlin, hopelessly, when he was arraigned in Kings County Court charged with breaking into a grocery store. Then he explained that he was sixty-three years old, had spent thirty-five years in prisons and expected to end his days in one.

"When I was arrested first," he said, "I was innocent, but they found me guilty and sent me up for twenty years. I escaped, and they caught me, and piled a year and four months on top of the twenty. When I finally did get out I had a grudge against the law, and it's cost me fourteen more years in jail trying to satisfy it."[1]

Such instances illustrate the failure of prison methods, which are expensive and ineffective. Society spends enormous amounts of money for punishment and the results are indicated in the typical cases just described. In law-abiding Iowa it is estimated that two thousand persons find themselves in jail for the first time each year. They are beginning where Whalen and Ferguson started their careers.

The report of the Chicago City Council Committee on Crime, of which Prof. Charles E. Merriam of the University of Chicago was chairman, brought out clearly the fact that the jails and prisons of that city are filled with "poor and petty criminals," or persons who are not guilty of any crime at all.

> Out of 109,764 persons arrested in a single year less than ten per cent were arrested on felony charges. The great mass—90 out of every 100—were arrested for trivial offenses, or for no offenses at all, as evidenced by their discharge in court. That few arrests were for serious offenses is clear from the disposition of the cases in court. Only 2 per cent were held for the grand jury, only $1/10$ of one per cent were sentenced to the county jail, only 1.8 per cent were sentenced to the House of Correction, only 40 per cent were fined, and the others, more than half of all the persons arrested, were discharged. And it must be emphasized

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[1] *The Boston Herald*, Dec. 27, 1915; *The New York World* quoted in *Daily Iowan*, January, 1924; *The Chicago Tribune*, June 16, 1919.

that the hardships involved in needless arrests fall almost exclusively upon the poor. The well-to-do are not arrested for trivial offenses. The system that allows the arrest of thousands of men and boys every year for offenses so slight that no judge will even fine them is a system of which the poor may be said to be the exclusive victims.

Moreover, the prisoners who were sentenced were in the great majority of cases sentenced because of their poverty. Out of 14,709 prisoners in the House of Correction, 12,124 or 82 per cent, were there only because they were too poor to pay the small fines imposed upon them. The records for four years showed that from 82 to 87 per cent of all the persons imprisoned during that time were imprisoned for the non-payment of fines, and more than half of these persons were committed for fines of less than $20.

The other great local institution for Chicago's prisoners is the Cook County Jail. "Of 8,593 persons held in jail during one year the vast majority were prisoners only because they were too poor to furnish bail pending trial." Only 219 were held on non-bailable offenses. Of the thousands of men and boys locked up every year in jail only a very small percentage are given any kind of a sentence. "The others, about seven thousand every year, become 'jailbirds,' and suffer the penalty of imprisonment only because they are too poor to provide the necessary bonds."

While the majority were held awaiting trial for less than a month, 1,660 were kept in jail for periods varying from four weeks to sixty-three weeks. There was not sufficient evidence against some of these men even to secure an indictment by the grand jury, and 251 were held in jail for from two to sixteen weeks.[1]

Early and middle adolescence is the great crime period. It is significant that the worst year in boyhood is usually the year after leaving school. The years from fourteen to sixteen are the "wasted years" to working children. The solution of many of our social problems depends upon wise treatment during these critical years of adjustment to the relationships of life.

The youth of the criminals serving sentences in our prisons has deeply impressed Dean George W. Kirchwey, at one time warden of Sing Sing Prison. In that prison fifty per cent of the convicts are under twenty-five years of age and eighty per cent are under thirty years of age. A comparatively small proportion are mature men. A recent study of the Cook County Jail in Chicago disclosed similar conditions there. Twenty per cent of the prisoners were not twenty years old.

Less than four per cent of the men at the Reformatory at Anamosa, Iowa, have completed a high-school education, and less than one in five hundred has completed a college course. According to the men's own statements, more than fifty per cent never completed the sixth grade, and an examination by standardized achievement tests showed that, at the time of entrance, more than eighty per cent lacked sixth-grade efficiency. More than five per cent never attended school, and more than twenty-three per cent never got beyond the third grade.

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[1] *The New Republic*, vol. V, pp. 7–8, Nov. 6, 1915, reprinted in pamphlet form by The Juvenile Protective Association of Chicago, 1915.

Again, more men are committed at nineteen than at any other age. Three and one-half times as many are received at seventeen as at sixteen. Forty-seven and two-tenths per cent are past eighteen and under twenty-two, and, of the total number, more than fifty-six per cent are under this age. Eighty per cent are under twenty-five years of age, and one-fourth less are received at twenty-two than at twenty.

These statistics indicate that seventeen, eighteen, nineteen, twenty and twenty-one are the ages when the boy who is low in necessary information and skills finds himself handicapped both in obtaining employment that will support him in his normal demands and in mingling freely with those for whose companionship he yearns. Away from home and out from under both home restraint and social pressure, dissatisfied and discouraged and craving excitement, many boys transgress the law. The reformatory is essentially for young men too old to be sent to the training school at Eldora, but who present the same need for education, training and care. Within two or three years they are to be returned to civil life to become either an asset or a liability to the communities in which they live.

Instead of the training and education which they lack, we employ nearly half of the thousand inmates in the operation of sewing machines making dresses and aprons for a Chicago firm of contractors. For how many men are there opportunities in Iowa for employment in which the use of sewing machines is important? Although the reformatory is a well-managed institution, is it any wonder that it is not more successful in the specific work for which it is established?[1]

So far we have been suggesting the social responsibility for crime by indicating the results in some cases of the actual social treatment of crime. Lack of provision of opportunities for suitable recreation produces juvenile delinquency. Our prisons probably train more criminals than they deter or reform. When education and training are the essential needs, we compel the performance of a routine labor for which there is no local demand. We might add to these items in the social indictment the conditions of our jails described in the *Report of the Cosson Committee of* 1912 in Iowa. That committee received reports from city and county jails over the entire state and in "none of them was there provided any real form of productive labor and the jail which was sanitary, admitted plenty of sunshine and in which there was any proper segregation of prisoners was the rare exception and not the rule." There has been no

[1] The *Iowa Bulletin of State Institutions*, vol. XXV, pp. 49–50, January, 1923.

great change in Iowa jails since 1912, and Iowa is no better and no worse than other states in this respect. The American jail is largely a seventeenth century English institution persisting as an historical anachronism in twentieth century America.

Society, not individuals, is responsible for existing institutions. No individual alone can control the environment in the community in which he lives. Failure to participate in a normal way in the local social situation may be the fault of the individual. He may have every opportunity for a successful and happy life and may ignore all these advantages. There are, unfortunately, many conspicuous examples of such neglect. There is no very great danger that we shall overlook the individual causes of crime. They are deeply rooted in our moral codes. Crime as a social product is a newer concept and requires, consequently, argument and emphasis for its recognition and acceptance.

Modification and control is possible to an immensely larger degree, but it needs a new attack, based upon scientific research, using more trained workers with offenders, using new techniques and providing new environmental situations. To neglect such methods is to maintain the standpoint of the old-fashioned agriculturist who refused to learn scientific ways of increasing his crops. Differentiation in treatment based upon such criteria as age and prior criminal record is "like attempting to judge the milk-producing quality of a Holstein cow by counting the number of white or black spots on her hide."[1]

In the old medical treatment of tuberculosis the disease was first recognized when well established. Almost nothing was accomplished until another type of attack was used—investigation of how the disease begins and how it spreads. As a result prevention was attempted and within a generation such progress has been made that we are largely rid of it. Analogous progress is the way out of our crime problem.

Prevention may be described from another angle. Investigation seems to show that if an individual reaches young adult age without the development of criminal tendencies, the work of prevention in nearly every case is done. If by the age of eighteen to twenty-one decent ways of living have been established, there is very little chance of departure from desirable social conduct.

The easy way with which such considerations are ignored in dealing with offenders is most surprising. In court procedure, at meetings of bar associations and at prison association conferences, the neglect to consider the scientific aspects of the situation have led to a lack of recognition of the inefficacy of late attempts at prevention and the failure of much correctional treatment in reformatories and prisons. The essentials of causation and prevention have not been made the subject of scientific study and no really scientific experiments are undertaken to test the results in reformation of offenders and prevention of criminal careers.[1]

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[1] *The Survey*, vol. LX, p. 334, June 15, 1928.

Crime is an undesirable thing. The United States has altogether too much of it. The average citizen becomes impatient and he seeks some short and easy method for reducing the dangers to life and property. *Swift and sure punishment* seems to him the sure cure for criminal tendencies. No sooner, however, does the amateur reformer look into the subject carefully and become acquainted with what has been done in the past to combat crime and make the acquaintance of careful students of criminology than he begins to doubt the results of this procedure. He soon comes to realize that crime is but one symptom of a social disease; that, while we must resort to punishment as a temporary expedient, *only as we strive to improve the character of our social structure can we expect* any permanent reduction in the number of antisocial individuals.

Crime is conduct. Conduct can be studied and investigated and its causes stated and written down. In other words, conduct is subject to natural law. Our acts are phenomena to which scientific examination can be applied. We can study them, understand them, make generalizations about them and develop modes of treatment for the conditions which they show.

Such a view is destructive of the ordinary conception of crime which conceives of criminals as free-willing, free-acting, vicious persons, who commit their acts out of diabolical purposes. Free to choose between the right and wrong, they deliberately and perversely choose the wrong.

The continuance of crime is the result of the present methods of handling criminals. The prison door swings both ways. Substantially as many people come out of prison as go in. What protection has society received if these people return to criminal conduct? Something over half of the men and women in prison have served previous terms, some of them many terms.

Unless we are going to kill all of our criminals, or keep them shut up for life, there is only one way to protect society from crime. That is to discover why the individual commits crime and cure him of his impulse to do so. This calls for remedial measures and for the resources of all the sciences bearing on human conduct. In such a program punishment will play only a minor part. With this must go a program that will keep people from acquiring the states of mind that end in crime.[2]

Crime Conditions in the United States

There is a widespread impression that there is an enormous increase in crime and that it is of recent origin. It is regarded as due to the World

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[1] Healy and Bronner, "Delinquents and Criminals," pp. 213–217, The Macmillan Company, 1926.

[2] Quoted in part from a review by Winthrop P. Lane published in the *New York Herald Tribune* Books, Aug. 26, 1926.

War, to a breakdown of criminal justice, of parental authority and to the newspapers. Such statements as the following are frequently made: "statistics of our criminal courts show an unprecedented growth in crime"; "a widening and deepening tide of lawlessness"; "the number of criminals is increasing with incredible rapidity."

These statements are accepted by the public as accurate descriptions of existing conditions. They are often prefaced by the declaration that we have no trustworthy statistics of crime for the entire country. The true statement is overlooked because of the sensationalism of the exaggerated estimates or guesses. As a result we have the public convinced of the existence of a crime wave.

The only statistics of crime for the entire United States are the decennial enumerations of prisoners collected by the Census Bureau. From 1850 to 1890 these statistics were compiled in connection with each population census. In 1904, 1910 and 1923 prisoners were covered in special enumerations. In these years the statistics covered only *sentenced prisoners*—commitments during a specified period as well as prisoners present on a given day. Variations in the schedules used have resulted in lack of uniformity in the returns, making comparisons difficult. The census of 1910 was the only one previous to 1923 which exactly corresponded as to the classes of prisoners included.

As an index of crime these statistics are not reliable as was pointed out by the Director of the Census in 1910. Commitments are determined by state laws and local ordinances and also by the practice of courts and police. They are, however, the best that we have for the nation as a whole. All other figures are estimates based upon state and local records and extended to cover the entire country. They may be incorrect by a considerable but unknown percentage.

Crime statistics are the most difficult of all statistics. Many crimes are concealed. Police records are frequently unreliable. Different states have different schedules, making comparison difficult if not impossible. Crime statistics are complex because of the varying seriousness of offenses. Mortality statistics deal with deaths, while crimes range from petty violations through misdemeanors to serious offenses—from traffic violations and playing ball in city streets to murder.

Increase of population must be considered in comparisons covering long periods of time. With growth of population there obviously will be more crimes committed without any increase in criminality. In Massachusetts in 1926 there was the usual outcry about a crime wave and demands for more drastic laws. The Massachusetts Civic League published a little leaflet which gave some interesting figures on the actual crime conditions in the state. These figures showed that while there had been an increase of fourteen per cent since 1914 in cases begun in the lower courts, there had been an increase in population for the same period of thirteen and one-half per cent. The crime wave in Massachusetts in 1926, consequently, was one-half of one per cent.[1]

Similarly, crime statistics must be studied with the variations due to age, sex, racial composition and urban and rural distribution. When examined scientifically—fairly and rationally—many current ideas will be found to need revision.

As a matter of fact, our crime rate is by no means of recent or sudden development. It is a chronic condition that has existed for a generation. Its roots are to be found in such factors as the heterogeneous composition of the population, rapid growth and mobility and the restlessness and impatience of restraint inherited from pioneer times. In addition, our great national wealth has offered an exceptional chance for gain to those inclined to crime.[2]

> Our crime wave coincides with an economic golden age which manifests itself otherwise in industrial expansion, crowding inventions, huge building programs, and intense interest in material achievements. I argue that we have more crime per capita than the British for the same reason that we have more automobiles, more telephones, more ton-miles of freight moving, and more horse power of electrical energy per capita. In other words, a good deal of our crime, certainly the major part of our money crimes which multiply most rapidly, flow from our "go-getting" spirit, while much of British innocence from crime may be traced to the quite evident lack of that spirit.
>
> One reason the British who stayed at home bred a peaceful posterity is that they lacked a frontier; one reason we are more lawless is the simple fact that America had a frontier from 1607 to 1890.
>
> As the frontier moved west, it rolled along its load of deviltry—horse stealing, cattle rustling, murders, gang feuds, lynchings, gambling, stage-coach stick-ups, train robberies, and bank robberies. Either the law or the vigilantes got most of these sinners in the end; yet scores of them, like Billy the Kid, the James Brothers, and John Oakhurst, live on in history, folklore and literature, sublimated into heroes by a populace which forgives anything except listlessness, and sees in every desperate act some smattering of the admirable. That our geographical frontier has passed signifies nothing as yet; our great cities, the present hot beds of crime, are the frontiers for hosts of new Americans, offering to their released energies and stimulated wants as many immunities and opportunities as the West used to offer "its bad men."[3]

The latest comprehensive statistics in the United States are contained in *Prisoners*, 1923, a report on prisoners in penal and reformatory institutions based upon a special census taken by the Bureau of the Census for that year. The report is restricted to sentenced prisoners. The detailed information collected relates to those present on January 1, 1923, and to those committed and leaving during the first six months of 1923. For comparison with former censuses, figures are usually shown for the number of commitments during the entire year, including estimated commitments during the last six months of the year.

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[1] *Massachusetts Department of Correction Quarterly*, p. 3, April, 1926.

[2] Adams, Our Lawless Heritage in *The Atlantic*, vol. CXLII, pp. 732–740, December, 1928; Dodd, Our Ingrowing Habit of Lawlessness in *The Century*, vol. CXVI, pp. 691–698, October, 1928.

[3] Pound, The Sunny Side of Crime in *The Independent*, vol. CXVI, pp. 708–710, June 19, 1926.

During 1923 more than 375,000 adult and juvenile offenders were committed to correctional institutions. A conservative estimate is that 500,000 other convicted offenders were punished by fines, suspended sentences or placed upon probation. Probably yearly convictions were over 1,000,000, or one for every 100 of population. The annual number of arrests probably exceeded 5,000,000. Finally, millions of violations of laws and ordinances occur for which no one is arrested. It is possible to estimate only very roughly the annual statistics of convictions and arrests. There is no way even to estimate the number of crimes committed or known to the police.

Statistics for 1923 show that the total volume of crime was less for that year than for 1910; 325 prisoners were committed to penal institutions per 100,000 of population compared with 522 in 1910. Separate figures for prisons and reformatories and for jails and workhouses indicate that serious crime increased slightly from 30 commitments in 1910 to 34 in 1923, while petty crime decreased from 492 commitments in 1910 to 291 in 1923.

Homicide statistics are based upon mortality reports published by the Census Bureau. These figures are compiled from the death certificates issued in the death registration area and include "justifiable" as well as criminal homicides. In 1925 there were 8,893 homicides or 86 per million of population in the death registration area, which covered 89.4 per cent of the total population; in 1926 there were 9,210 homicides for approximately the same area.

A comparison of homicide statistics over a period of years indicates that, in the twenty-one states included in the registration area in 1910, the rate has alternately increased and decreased between a minimum of forty-six per million of population in 1910 and a maximum of sixty in 1917. The rate was somewhat higher from 1917 to 1926 than from 1910 to 1916. There has been no continuous upward rate in recent years. There is no question, however, but that the rate in the United States is "scandalously high as compared with rates in foreign countries." Canada had only ninety-eight homicides in 1924 or fifteen per million of population as compared with eighty-five in the United States. In 1926 the homicide death rate for England and Wales was seven per million of population. The England rate has varied slightly during the last ten years, from five in 1918 to eight in 1919 and 1920. The Italian rate has also varied little since 1900, although during some years it has been much higher on account of revolutionary or other political disturbances.

One of the reasons for the high homicide rate in the United States is the wholesale manufacture and sale of firearms subject only to slight restrictions and the prevalence of the carrying of these weapons which is the result of such widespread distribution. Of 9,210 homicides in 1926 firearms were used in 6,377 instances or in 69.2 per cent of the cases. Another factor is to be found in the large Negro population. In 1926 the homicide death rate was 454 per million of population for the colored race as against 52 for white persons—nine times as many for the colored as for the white population.[1]

The present volume of serious crime is largely made up of offenses due to the violation of new laws. In the period under consideration, 1910 to 1923, violations of liquor laws increased over 300 per cent and of drug laws over 2,000 per cent. Increase in automobile traffic accounts for 67 per cent of the violations of city ordinances punished by imprisonment.

Public intoxication, disorderly conduct, vagrancy, prostitution, larceny and burglary show significant reductions. The falling off in larceny by more than one-half is remarkable in view of the enormous increase in automobile thefts during recent years.

The only offenses that show an increase, in addition to those already mentioned, are rape, forgery, homicide and robbery. As to the first, increase has been due mainly to the raising of the "age of consent" from ten to sixteen and eighteen years. Probably banks and business men have united in more vigorous pursuit and prosecution of those guilty of forgery—not more crime, but better law enforcement. The increase in homicide "may be in part explained as an incident of the illegal traffic in liquor and drugs, and of the reckless operation of the automobile in crowded city streets, but it may in larger part fairly be attributed to the reckless use of the gun in connection with robbery." In three cities, Baltimore, Cleveland and Chicago, where the police records are checked up and verified by local civic organizations, these reports confirm the results of the analysis of commitments of the Census Bureau.

Robbery, with murder as a frequent incident, is the chief cause of the prevailing belief in the existence of a crime wave. Not because of its frequency. Notwithstanding its increase in the country at large and the reduction in burglary, the number of robberies is little more than one-third the number of burglaries. Fifteen years ago it was only one-fifth. It is the sensational character of the crime that has given it its spectacular effect.

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[1] "The American Year Book, 1926," pp. 619–622; "The American Year Book, 1927," pp. 432–433; "The American Year Book, 1928," pp. 488–491. F. L. Hoffman of the Prudential Insurance Co. has published articles in *The Spectator* (insurance weekly) annually since 1923 in which he presents statistics of murder in a much more alarmist way. See *The Spectator*, May 8, July 17, 1924; June 2, 1927; March 29, 1928

Economic and social conditions have favored the rapid increase of robbery. Big payrolls, rich jewelry, the automatic gun and the automobile attract the most daring criminals. The newspapers report and dramatize every detail of every holdup of bank and store. They make it "look like easy money with a minimum of risk." Such crimes could not have occurred twenty-five years ago.

During the years 1919 to 1922 bank burglaries increased in the central western states until they were six times as numerous as in the New England states. The use of the automobile, improved roads, banks located in small buildings and in small towns easily isolated for short periods by the cutting of telephone communication, explain the prevalence of these crimes in states like Iowa. Conditions rather than increased criminality are contributing causes.[1]

It seems to be an accepted opinion nowadays that the age of criminals has been decreasing. "Press, pulpit and public are agreed that youth is wild and getting wilder." Recently the Children's Bureau undertook to throw a little light of a scientific character on this question. If public opinion is correct, the records of juvenile courts and institutions dealing with delinquents ought to reflect the results. Investigation was made of delinquency rates in fourteen of the leading cities and an analysis of the age distribution of the adult population of prisons, reformatories, jails and workhouses from 1880 to 1923.[2]

In nearly all the cities the delinquency rates per 1,000 children were decidedly lower in 1924 or 1925 than in 1915. There was an increase during the war period, 1917 to 1919, but in most cities the downward trend thereafter was marked. Typical of the general trend is Chicago, where the rate was around five or six delinquents per 1,000 children and since 1920 has been three or four.

The records of delinquents committed to institutions declined markedly from 1910 to 1923 in proportion to population. This was in spite of growing efficiency, better record keeping and other factors that should mean a larger number of commitments. In 1910 admissions to institutions were 171.7 per 100,000 while in 1923 they were only 161. The percentage of children committing serious crimes—homicide, robbery and burglary—in 1910 was 7 per 100,000 and in 1923 it had declined to 6.8.

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[1] Kirchwey, Crime Waves and Crime Remedies in *The Survey*, vol. LV, pp. 594–595.

[2] This study was based upon materials available in the office of the Children's Bureau. It was first printed in the *Journal of Criminal Law and Criminology* for August, 1926, under the title of Trend in Juvenile Delinquency Statistics. The annual collection of juvenile court statistics has recently been undertaken in a more systematic manner. *Juvenile Court Statistics*, 1927, has recently been issued as bureau publication 195.

The figures regarding the average age of prisoners give similar results. In 1923 only 9.4 per cent of the commitments were of persons between eighteen and twenty as compared with 9.8 per cent in 1904, 12.1 in 1890 and 11.8 in 1880. There has been no increase in the proportion between twenty-one and twenty-four during the last twenty years or in the group from twenty-five to thirty-four. "A slight increase occurred between the ages of thirty-five and forty-four; it is Wild Middle Age, then, rather than Wild Youth."

These statistics do not, of course, show that all the statements of alarmists are wrong, but they do reveal the fact that they are not indicated in delinquency and prison figures. The complaint that youthful criminals are a new phenomenon is without statistical basis.

What remains of the crime wave after it has been subjected to the tests of such statistics as we have? We are not justified in declaring that there is a crime wave. Such statistics as we have do not confirm its existence. The only conclusion we can reach must be a negative one. The verdict of the jury must be not proved. Apparently the sensational character of a few crimes has created a belief in the existence of a crime wave. Reasoning from the particular to the general is as dangerous in this case as usual. Like gossip it grows enormously as it passes from person to person. Guesses and estimates become established facts after they have been repeated a few times. An editorial or a sermon gives them widespread publicity and acceptance.

Fifty years ago our present state of mind had its counterpart. A paper read before the Conference of Charities in 1878 contained such phrase as "crime constantly increasing," "prisons crowded," "more prolific than any other in the production of crime—the vice of intemperance."

Every decade or two the "crime wave" is discovered over again and is announced to the entire country as if it represented a sudden slump in a previously law-abiding society. Dean Edith Abbott of the University of Chicago declares that in over twenty years of residence in that city "there has not been a single year without its crime wave." It is no new situation that confronts us. Both the fact of crime and alarm about it are a part of our history. The crime wave is a state of mind.[1]

Recent discussions in regard to the increase of crime have emphasized the need of better criminal statistics. Beginning with 1926 the Census Bureau has undertaken, with the support of several national organizations, an annual census of persons committed to penal institutions. The results of the first annual census of prisoners covering the year 1926 were published in 1929. This census included all state prisons and reformatories and also the four federal civil penal institutions. A total of ninety-nine prisons and reformatories came within the scope of this study. Reports were received for ninety-six of these institutions, which received a total of 47,000 prisoners from the courts during 1926. This number represented ninety-six per cent of the total number of prisoners received from the courts during the year. It is estimated that the entire ninety-nine institutions received 49,000 prisoners.

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[1] Potter, Spectacular Aspects of Crime in Relation to the Crime Wave in *The Annals of the American Academy of Political and Social Science*, vol. CXXV, pp. 1–19, May, 1926; Abbott, The Civil War and the Crime Wave of 1865–1870 in *The Social Service Review*, vol. I, pp. 212–234, June, 1927.

Detailed information was collected as to the sex, race, age, country of birth, sentence, number of times imprisoned and the month of admission of 43,328 prisoners received during 1926. Information was also collected as to the sex, method of discharge, length of time imprisoned, offense, sentence, and number of times imprisoned for 40,210 prisoners discharged during the year.

The state and federal institutions receive the great majority of prisoners who are imprisoned for serious offenses—those convicted of felonies or sentenced to terms of one year or more. On January 1, 1923, these institutions had 81,959 prisoners, or 75.1 per cent of the 109,075 prisoners reported to the Census Bureau. They also had 38,628 prisoners received from the courts during 1923, representing only 10.8 per cent of the admissions to all classes of penal institution during the year, which numbered 357,493.

Statistics of prisoners are valuable for showing how our law-enforcement machinery operates with reference to those offenders who are arrested, convicted and punished. They indicate the application of penal policies to various classes of offenders and in different parts of the country. They give us the prevailing characteristics of those offenders who are punished by imprisonment.

The limitations of prison statistics are obvious. The criminals who are imprisoned represent only a small percentage of the total number of law breakers. Many are never arrested, many of those arrested are never tried, and a large number of those tried are not convicted. Many of those convicted are punished by fines, and, if they pay the fines, they are not imprisoned. More recently the use of probation has increased, with the result that prisoners have formed a decreasing percentage of all convicted offenders.

Comparisons of the number of sentenced prisoners present on specified dates give the following results:[1]

	1904	1910	1923	1926	1927
Federal	1,641	1,904	4,664	6,430	6,803
State	55,429	66,831	77,295	83,617	89,322
Total	57,070	68,735	81,959	90,047	96,125

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[1] *Prisoners in State and Federal Prisons and Reformatories*, 1926, Government Printing Office, 1929.

The number per 100,000 of general population for the same dates were as follows:

	1904	1910	1923	1926	1927
Federal	2.0	2.1	4.2	5.5	5.8
State	68.5	73.1	70.2	75.2	79.3
Total	69.1	74.7	74.0	82.7	85.0

Another recent publication of the Census Bureau presents statistics concerning the previous life of offenders committed to state and federal prisons and reformatories during the first six months of 1923. These institutions include three federal prisons, sixty-one state prisons and thirty-eight state reformatories. The statistics present information about 19,080 offenders. While these prisoners formed only 11.5 per cent of the total commitments during the first six months of 1923, they constitute a group made up largely of persons convicted of relatively serious offenses. Probably they include "all but a negligible percentage of the major offenders" committed during six months. This study of The Prisoner's Antecedents "analyzes certain characteristics of this group and presents a condensed description of their social background, giving statistics which have never been collected in any previous census, and which were obtained through new questions on the census schedules."

Two classes of data are presented: (1) concerning the crimes of which the prisoners were convicted, and (2) concerning the personal characteristics and the previous careers of the offenders.

Data of the first group includes the classification of prisoners by offense and according to the character and size of the places where their crimes occurred. In the second group are comprised the distribution of prisoners by place of residence; length of time in the state and county where crime was committed; status as to education, family condition, and age of leaving home; earnings and employment records; previous institutional history; record as to service in the army and navy during the World War; and distribution by age in relation to marital condition.

For some of the new items of information less complete returns were secured than for the regular items that appear in the usual records of most institutions. The percentage of cases in the "not reported" group was unavoidable because of the fact that answers to the new inquiries were necessarily obtained by special interviews with the prisoners.

In the statistics dealing with the place where the crime occurred, the chief fact is that crime is far more prevalent in the city than in the country. Of the total number 77.8 per cent were imprisoned for crimes committed in urban places, while rural regions were the scene of only

22.2 per cent of the crimes. In 1920 urban population comprised only 51.4 per cent and rural territory had 48.6 per cent of the total population. The contrast is brought out more distinctly by the ratios of commitment per 100,000 of the population which give a ratio of 25.1 for urban population as against a rural ratio of 7.6. There were over three times as many commitments for urban places as for the rural sections.

Distribution of commitments according to the size of the city or town is interesting. Cities of 25,000 to 100,000 show the highest ratio (28.6), but almost the same ratio (28.4) is shown for towns having a population of 2,500 to 10,000. The small cities of 10,000 to 25,000 have a smaller ratio (25.8) than the two classes of urban places first named. The largest cities, having more than 100,000 inhabitants, have a ratio (22.5) which is lower than those of all the other classes of urban places.

Residence of prisoners affords evidence that they are drawn mainly from the cities and towns. Urban places had 23.1 commitments per 100,000 as compared with a rural commitment ratio of 10.2 per 100,000.

Length of time in the state and county where the crime occurred shows that 10.1 per cent had been in the county less than one month, and more than 27 per cent less than one year before the crime. Comparable data are lacking, but there is little doubt that the general population is less migratory.

The educational status of the prisoners is shown as decidedly lower than for the population as a whole. The ratio of commitments per 100,000 of the adult population was 42.7 for the illiterate as against 27.3 for those able to read and write. In the literate group the commitment ratio is highest (31.4) for those of only elementary school education and lowest (14.3) for prisoners with some college training. The ratio is about three times as high for the illiterate as for the college group. It must be remembered that these figures cover only convicted prisoners. Probably offenders having education are more successful than the uneducated law breakers in avoiding arrest and conviction.

The figures as to age and marital condition show that, for both sexes and for all age groups, the divorced population furnish a disproportionate number of prisoners. The highest commitment ratio for any age group is the ratio of 642 per 100,000 for divorced males from twenty to twenty-four years of age. For both men and women the commitment rates are very high for the age groups under twenty-five and decline sharply for each group above twenty-five years.

Of the total number whose family status was reported, 61.7 per cent were living with family or relatives, while 38.3 per cent were not living with family or relatives and, consequently, had no normal family life. It is probable that a much smaller proportion of the general population are not living with relatives. The high percentage of prisoners not living with relatives thus represents an abnormal condition.

The influence of unfavorable environment during youth as a factor causing delinquency has been demonstrated by case studies of young offenders. The data with respect to the age when prisoners were separated from their parents produced the following facts: 6.3 per cent had been separated before they were ten years old, 16.1 per cent before they were fourteen years old and 29.6 per cent, or nearly one-third, before they were sixteen years old. Those who remained at home until they were twenty-one formed only 24.9 per cent, or less than one-fourth of the total number. Common experience suggests that as a rule these prisoners left home at a much earlier age than is the case with the non-criminal population.

From the data as to earnings, the average weekly full-time wages are estimated as $30 for the men and $16 for the women. Compared with the estimates made by The National Industrial Conference Board these figures are somewhat larger. This showing may be due largely to the fact that the statistics are not restricted to wage-earning occupations, but cover also the larger earnings of professional and business men. In some cases they may include the proceeds of criminal activity. Those imprisoned for violation of the liquor laws had the largest proportion (46.5 per cent) with weekly earnings of less than $20 and only 16 per cent of this group had earnings of $40 and over. Low earnings prevailed among those convicted of burglary and larceny. The three groups with the lowest percentage of prisoners earning less than $20 weekly were those convicted of embezzlement, fraud and having stolen property.

Of the male prisoners whose employment status was reported, 30.6 per cent were unemployed at the time of the crime as compared with 38.7 per cent of the female prisoners. The percentage unemployed for six months or more was 6.4 for men and 14.2 for women. These figures indicate an exceptional amount of unemployment as compared with the general population at a time when there was little unemployment in the country. Much of this unemployment may have been voluntary, since the data cover many habitual offenders who engage in legitimate occupations only to conceal their criminal activities. Among the men unemployment before the crime ranges from 46.4 per cent for the burglary group to 7.7 per cent for those convicted of embezzlement; for robbery it was 39.4, for violation of drug laws 35.2, for larceny 35.1, and for forgery 34.7. The percentages were small for homicide, rape, liquor laws and fraud.

Data concerning the repeated offender is of great value to the criminologist. The statistics collected in 1923 indicate that 50.5 per cent of the offenders committed to prisons and reformatories were repeaters and 46.8 per cent of those committed to jails and workhouses. Repeaters made up 64.3 per cent, or nearly two-thirds of the men imprisoned for burglary, 60.1 per cent for violators of the drug law, 56.1

for the robbery group and 55.3 for those convicted of having stolen property.

Returns in regard to care in non-penal institutions were less complete than most of the subjects already discussed. Only 5.1 per cent were stated to have been admitted to such institutions. The percentage was higher for women (18.9 per cent) than for men (4.4 per cent). The percentage of patients in tuberculosis hospitals was decidedly higher for males than for females. Of the women 14.4 per cent had been cared for in general hospitals as compared with 2.2 per cent of the men.

The statistics in regard to war service throw little light upon the relation of such service to criminality since most of those in the army and navy did not serve at the front. The sudden removal of millions of young men from the home environment to life in the army camps and in the navy could not fail to have great social significance. The percentage of prisoners with war service was relatively high for most gainful offenses against property and relatively low for offenses against the person.

Lack of comparable data for the general population makes it impossible to draw really sound conclusions from this study of nearly twenty thousand offenders in penal institutions in the United States in 1923, but in the course of time such data can be compiled, and successive studies similar to this will give us a statistical basis for many generalizations which are now made without substantial scientific foundation.[1]

The Cost of Crime

The high cost of crime is shown by the Census Bureau of the Department of Commerce in a summary of expenditures for police departments in 250 cities during 1926. In 1916 municipal law-enforcement machinery cost $3.09 per capita; in 1926 it took $5.70 from the pocketbook of the average citizen. The total outlay for 1916 was $99,595,230; in 1926 it was $238,684,864.

This increase cannot be explained altogether by the greater prevalence of crime. A general increase of prices is partly responsible. Police forces have required enlargement as urban population has grown. The traffic problem has demanded the attention of more men. These changes rather than a tidal wave of crime have been responsible.

Still it is time for the taxpayer to take a look at the machinery with the idea of increasing its efficiency and limiting its cost. "If it were a matter of getting more mileage out of his automobile, he would spend hours tinkering with the carburetor to save one drop of gasoline." Since it is the police department, he feels that it does not concern him at all vitally. This is one of the reasons why more progress is not made in dealing with criminals.[1]

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[1] *The Prisoner's Antecedents*, Government Printing Office, 1929.

Sutherland gives estimates of the total financial cost of crime varying from $600,000,000 a year in 1900 to $5,000,000,000 and $6,000,000,000 a year in recent times. He remarks that "little dependence can be placed on any of these, but it seems probable, in view of the large number of items to be included and the immense losses that are known, that the highest of these is none too high. When we consider that the estimate of the direct cost of education is about one billion dollars a year, it is evident that crime is one of the big financial burdens on modern civilization."[2]

In Massachusetts in 1908 Spalding estimated that the detection, conviction and punishment of crime required more than one-tenth of all the money raised by taxation. In Boston one-eighth of the funds collected by taxation were spent on account of crime. Boston was not exceptional, as in some cities the proportion is as high as fourteen per cent. The official valuation of state property used for housing criminals was $4,934,163. County prisons cost nearly $7,000,000, making a total cost of almost $12,000,000. To this must be added the cost of police stations and court houses. Based upon the cost of crime in Massachusetts, ten per cent of all the money raised for taxation in the United States is spent upon criminals.[3]

The total annual levy which crime places on the country is not less than $10,000,000,000 according to a writer in a business magazine published in Detroit. This sum is about three times the amount of the national budget, two and one-half times the total ordinary receipts of the nation for a year, more than three times the customs and internal revenue receipts and at least twelve times the annual cost of the army and navy.

An inquiry by the Retail Credit Men's Association of St. Louis as to the annual bad check loss of the average retailer led to the conclusion that it is about $150.

The direct property loss through crime is only the beginning of the account. The indirect cost is much greater. To the cost of prevention, detection, prosecution and punishment of crime and the cost of the police system, their wages and expenses, must be added the cost of courts, prisons, jails, reformatories, the feeding of the inmates and the cost of guards, jailers, wardens. At all times about 200,000 persons in the United States are under lock and key. Not only do criminals live at the expense of the community, but they are an unproductive force. If the annual productiveness of the individual is estimated at the conservative sum of $1,500, this economic waste must be added to the crime bill.[1]

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[1] *The Independent*, vol. CXX, p. 123, Feb. 11, 1928.

[2] SUTHERLAND, "Criminology," p. 68, J. B. Lippincott Company, 1924.

[3] SPALDING, The Cost of Crime in the *Journal of Criminal Law and Criminology*, vol. I, pp. 86–102, May, 1910.

CONCLUSION

The social responsibility for crime is large. No solution of the crime problem is possible without a clear recognition of the relation of society to the development of crime. Our exaggerated emphasis upon individual responsibility, inherited from earlier times and embedded in our legal codes, must be subordinated to the recognition of the social aspects of crime. Such statements as the following: "society should forget the dead murderers and turn its attention to the live ones"; "the killer who has been executed never kills again. A reasonable certainty of the extreme penalty will stay the arm of most slayers"; "the surest way to stop murder is to exterminate the murderers," are illustrations of this[2] point of approach. The futility of such methods was recognized by Blackstone 150 years ago in a well-known paragraph of his "Commentaries," in which he referred to the fact that 160 offenses were then (1765) punishable by death under English law. Commenting on this fact, he said:

> So dreadful a list, instead of diminishing increases the number of offenders. The injured, through compassion, will often forbear to prosecute; juries, through compassion, will sometimes forget their oaths, and either acquit the guilty or mitigate the nature of the offense; and judges, through compassion, will respite one-half of the convicts, and recommend them to royal mercy. Among so many chances of escaping, the needy and hardened offender overlooks the multitude that suffer; he boldy engages in some desperate attempt to relieve his wants or supply his vices; and, if unexpectedly, the hand of justice overtakes him, he deems himself peculiarly unfortunate in falling at last a sacrifice to those laws, which long impunity has taught him to condemn.[3]

The belief in the existence of "crime waves" is another popular belief that is encouraged by the newspapers and by amateurs in the field of criminology. A careful study of available statistics indicates that there is no ground for the extreme statements so frequently made about the recent growth of crime. Sensational holdups and robberies often resulting in murder are the foundations for the popular belief. At the same time, the United States has far too much crime, and such a situation has existed for a generation. Unregulated sale of firearms is responsible for a very large proportion of our excessive record of murder. Very slight restrictions upon the sale of poisons is another factor contributing to the same result. Administration of justice by our courts in murder cases is far from satisfactory. There is too much delay and there is altogether too much trial by the newspapers.

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[1] *The Literary Digest*, July 5, 1924.

[2] *San Francisco Chronicle*, Aug. 27, 1927, editorial on execution of Sacco and Vansetti.

[3] ABBOTT, Recent Statistics Relating to Crime in Chicago, *Journal of Criminal Law and Criminology*, vol. XIII, pp. 354–355, November, 1922.

The cost of crime is accepted as an inevitable expenditure. There is little popular opposition to the building of a new jail, but appropriations for the extension of probation and parole work are difficult to obtain. Public opinion fails to see that wise and scientific treatment involving larger temporary expenditure will lessen the permanent burden. A good probation officer requires a good salary, but good probation work saves far more than it costs. The average per capita cost of a year's imprisonment is approximately $500. If a probation officer makes unnecessary the confinement and support of four offenders, he has saved the equivalent of an annual salary of $2,000. This estimate does not take into account the amount saved to the community in the long run by the probable cutting off of a criminal career at its beginning in the case of each of these delinquents. Furthermore, probation officers collect large sums from men on probation for the support of their wives and children, in payment of fines by installments and as restitution for damages. There are many other preventive agencies that have been thoroughly tested so that we know their effectiveness. A real emphasis upon preventive work for a generation might well be expected to result in gains comparable to those made in preventive medicine.

The recognition of the social responsibility for crime, the improvement of criminal statistics so that we may really know the facts as to crime and the diversion of a portion of public expenditure for punishing criminals to preventive work are clearly the lines of progress to be followed in dealing with the crime problem.

Review Questions

1. How does the case of the morphine habit illustrate social responsibility for crime?
2. How does crime begin as sport or as adventure?
3. What is suggested by the statement, "twenty-five years in prison and still a burglar."
4. What else might have been done with Whalen, Ferguson and Devlin?
5. What aspect of the crime problem in Chicago is of greatest importance to society in the long run?
6. Why do poor and petty criminals fill our jails?
7. State concisely the relation between poverty and the number of inmates of the Cook County Jail and House of Correction.
8. What is the significance of the age and education of the men at Anamosa.
9. How does the public school fail in its work?
10. Explain how society is responsible for crime. Why is there need of emphasis upon crime as a social product?
11. How can the crime problem be dealt with more successfully?

12. Compare present-day treatment of crime with the medical treatment of tuberculosis.
13. Discuss crime statistics in the United States.
14. Compare mortality and criminal statistics.
15. Explain why our crime rate is not of recent or sudden development
16. Give reasons why we have a high homicide rate in the United State
17. What conclusions can be drawn from the statistics collected by the Census Bureau in 1923? What crimes are increasing?
18. Is the age of criminals decreasing?
19. Is there a crime wave?
20. Is the crime wave a new phenomenon in the United States?
21. Why is the cost of crime increasing?
22. Compare the cost of crime with the cost of education.
23. What percentage of the money raised by taxation is expended for the detection, conviction and punishment of criminals?
24. What is included in the cost of crime?
25. What three lines of progress should be followed in dealing with crime?

Topics for Investigation

1. Discuss the nature of crime from the social point of view. See Sutherland, "Criminology," pp. 20–21, 29–30, 68–70.
2. Consider crime in its relation to modern social science. See Barnes, "The Repression of Crime," pp. 19–41.
3. Why are we interested in the criminal? See Gillin, "Criminology and Penology," pp. 3–9.
4. Study the crime situation in Chicago. See Sullivan, "Rattling the Cup on Chicago Crime."
5. What is "the sunny side of crime" in the United States? See Pound in *The Independent*, vol. CXVI, pp. 708–710; Dodd in *The Century Magazine*, pp. 691–698, October, 1928; and Adams in the *Atlantic Monthly*, pp. 732–740, December, 1928.
6. What is the effect of war on crime conditions? See Abbott in *The Social Service Review*, vol. I, pp. 212–234.
7. Discuss the cost of crime in city government and administration. See *Financial Statistics of Cities* of the Department of Commerce.
8. Compare the crime conditions in England and the United States. See Fosdick, "American Police Systems," Chap. I.
9. Study the statistics relating to crime in Chicago. See Abbott in the *Journal of Criminal Law and Criminology*, pp. 329–358, November, 1922.
10. Study *The Prisoner's Antecedents* published by the Bureau of the Census in 1929.

Selected References

1. Sutherland: "Criminology," Chaps. I–III.
2. Gillin: "Criminology and Penology," Chaps. I–III.
3. Parmelee: "Criminology," Chaps. I–III.
4. Parsons: "Crime and the Criminal," Chaps. I, II, IX.
5. Barnes: "The Repression of Crime," Chap. I.
6. Osborne: "Society and Prisons," Chap. I.
7. White: "The Principles of Mental Hygiene," Chap. V.
8. Lewis: "The Offender," Part I, Chaps. I–III.
9. Child: "Battling the Criminal," Chaps. I, V, X.

10. Fosdick: "American Police Systems," Chap. I.
11. Kavanagh: "The Criminal and His Allies," Chaps. I–IV.
12. Lawes: "Life and Death in Sing Sing," Chaps. I–III.
13. Davis and Barnes: "An Introduction to Sociology," Book IV, Chap. VI.
14. Sullivan: "Rattling the Cup on Chicago Crime."
15. *The Illinois Crime Survey*, Chaps. XVII–XXVII.

CHAPTER II

THE SCIENTIFIC STUDY OF THE CRIMINAL

During the medieval and early modern period the conception of natural causation was not understood. Even in the case of disease natural causes were only slightly recognized, and crime was generally regarded as due to innate depravity or to the instigation of the devil. Popularly, this belief is very widespread even at the present day, although its expression may take a somewhat different and milder form. The suspicion that we entertain of certain bad characters is frequently interpreted to mean that there are certain physical signs of criminality. Popular sayings embody these ideas: "there is nothing worse than a scanty beard and a colorless face"; "the squint eyed are accursed," and "beware of him who looks away when he speaks to you."

During the eighteenth century there developed the classical school of criminology. It emphasized a more rational treatment of the criminal, but it concerned itself primarily with the purpose of making punishment less arbitrary and severe. Not till the nineteenth century was there any real attempt to deal scientifically with the criminal. Lombroso was the pioneer in this line with his theory of the "born criminal." Lombroso and his disciples developed the so-called "positive school of criminology" which undertook to show that criminals could be distinguished by certain physical stigmata or anomalies. Their extreme claims have been discarded, but they began a long struggle for the scientific study of the criminal, which, seventy-five years later, still lacks any widespread acceptance.

The Classical School of Criminology

Among the evils attacked by the eighteenth century philosophers in France, Montesquieu, Voltaire and Rousseau, was the treatment of crime. The principles of these writers with regard to crime were collected and stated by Cesare Beccaria (1735–1794) in "Crimes and Punishment," published in 1764. His famous book became the theoretical basis for the reforms in criminal procedure which followed. It also furnished the starting point for the classical school of criminology. Its principles still underlie to a considerable extent most of the existing systems of procedure.

Beccaria, after describing the accidental origin of penal codes, declared that the object of law should be the greatest happiness of the greatest number. He used Rousseau's doctrine of the social contract as the basis of society. Each individual has a tendency to overstep the bounds of the social contract, and to commit acts which destroy it, and such acts are crimes. The right of punishment is derived from the necessity of suppressing such acts. The duty of judges is only to decide whether laws have been broken. They have no right to interpret them according to their own ideas of justice, but must apply them exactly as they have been passed by the legislative authority. The measure of punishment should be the injury done to the public welfare by a crime and not the intention of the criminal. The object of punishment is to restrain the criminal from doing further injury to society and to turn others from similar crimes. Punishment should be "public, prompt, necessary, proportioned to the crime, dictated by the laws, and the least rigorous possible in the given circumstances."

The classical school of criminology dominated the development of penal codes and systems of procedure during the nineteenth century. It was inspired by a humane spirit which objected to the cruelty with which criminals were treated. Their first great principle was that the rights and liberties of the individual must be conserved. Their second fundamental principle, derived from the first, was that crime is a juridical abstraction and, consequently, each crime had attached to it a definite penalty. A third principle was that punishment should be limited by the social need. In the place of irregular methods of procedure and absurd methods of testing evidence, these principles substituted an orderly procedure and rational rules of evidence. The classical school of criminology was first exemplified in the French penal code of 1791.

The Positive School of Criminology

The classical school of criminology was founded before the great modern development of the biological sciences and has been very slightly influenced by this development. To accept these conclusions to any great extent would be to destroy the fundamental theory of the school—that the treatment of the criminal is to be determined by the crime committed and not by the nature of the criminal. It was therefore left to a more recent school to utilize the results of modern science.

This new school, usually called the "positive school," was inaugurated in 1872 by the Italian anthropologist, Cesare Lombroso (1836–1909). His fundamental ideas were developed gradually during the years from 1864 to 1876.

The first idea came to him in 1864, when, as an army doctor he used his leisure to study Italian soldiers. He found that the honest soldier was distinguished from his vicious comrade by the extent to which the latter was tattooed and the indecency of the designs that covered his body.

The second inspiration came to him when, on one occasion, amid the laughter of his colleagues, he sought to base the study of psychiatry on experimental methods. In 1866, when he began to study psychiatry, he realized how inadequate were the methods hitherto used and how necessary it was to make the patient, not the disease, the object of attention.

Next he began to study criminals in the Italian prisons and made the acquaintance of the famous brigand Vilella. An examination of his skull after his death disclosed a condition very similar to that found in inferior animals, especially rodents. From this discovery he conceived that the criminal was "an atavistic being who reproduces in his person the ferocious instincts of primitive humanity and the inferior animals." He was further encouraged in his hypothesis by his studies of another criminal who showed cannibalistic instincts and the ferocity of beasts of prey.

The final key was given by another case, a young soldier of twenty-one unintelligent but not vicious. Although subject to epileptic fits, he had served for some years in the army when suddenly, for some trivial cause, he attacked and killed eight of his superior officers and comrades. He then fell into a deep sleep, which lasted twelve hours and on awakening appeared to have no recollection of what had happened. Lombroso, therefore, concluded that many criminal characteristics not attributable to atavism were morbid characteristics due to disease, especially to epilepsy.

In 1876 he published the results of his work in his book on criminal man which at first remained almost unnoticed. But in 1878 its second edition was accompanied by the appearance of two monographs, which supplemented the anthropological studies of Lombroso from the side of law and of sociology. Raffaele Garofalo published an essay in which he declared that the dangerousness of the criminal was the criterion by which society should be guided in its fight against crime. Enrico Ferri published a monograph in which he denied the doctrine of free will and personal responsibility and declared that criminology must look to the life of society for its facts. In 1881 Ferri published the first edition of his work on criminal sociology, and in 1885 Garafalo published his work on criminology. Because these three men, who have contributed to the work of the school, are Italians, it has been called the Italian school of criminology, but it has had adherents all over Europe and was developed in France, Germany and other countries as well as Italy.

Lombroso's first conception of the criminal was as "an atavistic phenomenon reproducing a type of the past." In his studies he went back not only to savage man but also to animals and even to plants. He found what he called "the equivalents of crime" among both animals and plants. There are many of the characteristics of animals which are natural and normal to them, but when reproduced among civilized men become criminal. The same is true of savages as compared with civilized men.

Lombroso's study of the skulls of criminals showed a great number of anomalies. Comparison of these skulls with those of the insane brought out the fact that criminals surpass the insane in most of the cranial anomalies. Comparison with savage and prehistoric skulls showed the atavistic character of some of the anomalies. A study of the convolutions of the brains of criminals revealed many anomalies—some of which were different from every normal type and others recalled the type of lower animals. The criminal brain also showed anomalies due to arrested development. Anomalies of the skeleton, heart, liver, genital organs and stomach were also noted.

The anthropometric and physiognomic study of 5,907 criminals, examined by Lombroso and about a dozen other criminologists, produced some interesting facts. "In general, many criminals have outstanding ears, abundant hair, a sparse beard, enormous frontal sinuses and jaws, a square and projecting chin, broad cheek bones, frequent gestures, in fact a type resembling the Mongolian and sometimes the Negro." The study of the living confirms, although less exactly and less constantly, the frequency of anomalies. It shows new analogies between the insane, savages and criminals.

The study of the anatomical characteristics of the criminal enabled Lombroso to separate the born criminal from the criminal of habit, of passion, or of occasion, who is born with very few or no abnormal characteristics. He found that one of the most notable traits of primitive man, or of the savage, is the facility with which he submitted himself to the operation of tattooing. By means of the statistics of 13,566 individuals, of which 4,376 were honest, 6,347 criminal and 2,943 insane, he showed that tattooing is quite common in some of the inferior classes of society but is most common among criminals. From the prevalence of tattooing he concluded that criminals are less physically sensitive to pain and are like savages in this respect. He also concluded that their moral insensibility was as great as their physical insensibility, and that the one was the result of the other.

Lombroso then discussed various psychological characteristics of the criminal, illustrating his instability, vanity, vengefulness, love for wine and gambling, lasciviousness, laziness, lack of foresight, variation in intelligence and professional slang. Atavism contributed more than any other thing. "They talk differently from us because they do not feel in the same way; they talk like savages because they are veritable savages in the midst of this brilliant European civilization."

Having described the character of the born criminal, Lombroso turned to certain analogies with the born criminal and then dealt with the other classes of criminals. He took up first the analogy and identity which he thought existed between congenital criminality and moral imbecility. He cited a good deal of evidence in support of the identity of moral imbecility and crime. He believed that this identity was confirmed by a similar likeness which he found between the criminal and the epileptic.

The two analogies between the born criminal and the moral imbecile and the epileptic mark the second stage in the development of Lombroso's theory. He no longer saw in the born criminal only an atavistic return to the savage but also arrested development and disease, thus making the born criminal both an atavistic and a degenerate phenomenon.

Lombroso then passed to the treatment of the other classes of criminals. The first was the criminal by passion. These "are quite rare, are usually young, have few anomalies of the skull, a good physiognomy, honesty of character, exaggerated affectability as opposed to the apathy of the born criminal, and frequent repentance after the crime, sometimes followed by suicide, or reformation in the prisons." But in this class are found traces of epilepsy and impulsive insanity shown by the impetuosity, suddenness and ferocity of their crimes. The frequency of suicide among criminals by passion also indicates a pathological state of mind.

A special kind of criminals by passion according to Lombroso are the political criminals. They have "an exaggerated sensibility, but a powerful intellect, a great altruism, which pushes them toward ends much higher: it is never wealth, vanity, the smile of woman which impel them, but rather the great patriotic, religious and scientific ideals."

Lombroso dealt next with insane criminals as a special class. A study of insane criminals indicated the presence of five to six characteristics of degeneracy in many of the cases. This fact, however, did not lead him to identify the insane criminal with the born criminal, but he found numerous analogies between the two in weight, height, skull, tattooing, and also many psychological analogies in the manner of committing crime. He connected certain kinds of crime with certain kinds of insanity.

The last part of Lombroso's work was devoted to the occasional criminal. The first group with which he dealt was that of the pseudo-criminals. These criminals commit crimes involuntarily; they commit acts which are not perverse or prejudicial to society, but which are called crimes by law; they commit crimes under extraordinary circumstances, such as for the defense of the person, of honor, or for the subsistence of a family.

The next group was that of the criminaloids. "Here the accident, the all-powerful occasion draws only those who are already somewhat disposed to evil." They are individuals who constitute the gradations between the honest man and the born criminal, or a variety of born criminal who has a special organic tendency, but one which is less intense, who has, therefore, only a touch of degeneracy—that is why they are called *criminaloids.* With them the importance of the occasion is decisive, while for the born criminal the circumstances are negligible, as for example in cases of *brutal mischievousness.*

The third group of occasional criminals was that of the habitual criminal. "The greatest number of these individuals are those who, normal from birth and without tendencies or a peculiar constitution for crime, not having found in the early education of parents and schools the force which facilitates the passage from physiological criminality, which belongs properly to an early age, to a normal, honest life, fall continually lower into the primitive tendencies towards evil. These individuals without an abnormal heredity are led by a group of circumstances conditioning their early life into a career of crime."

What then is the significance of the study of the criminal by Lombroso and the other criminal anthropologists who have been stimulated by him and who have in turn helped him? They have shown that a large number of criminals are not normal, many of them being very abnormal. They have distinguished between the different anthropological types of criminals. They have shown how the study of anthropology, medical science, psychology and psychiatry is necessary to understand the criminal. The practical significance of their work for the treatment of criminals is obvious. For the rational treatment of the criminal, it is necessary to be acquainted with these sciences in order to distinguish the criminal from the normal and honest and to determine the specific type and character of each criminal.[1]

Lombroso was one of the group of great thinkers of the nineteenth century, who had the courage and the wisdom to apply the positive, inductive method of modern science to the study of human and social phenomena.

Lombroso was the great pioneer whose original and versatile genius and aggressive personality led in the great movement towards the application of the positive, inducive methods of modern science to the problem of crime, and who stimulated, more than any other man, the development of the new science of criminology.[2]

Garofalo (1852–), a jurist, began with the conception of a crime, not a juridical but a sociological conception. Crime, according to him, was not an artificial thing created by law but a natural phenomenon. Crime, in fact, was always "a harmful act which, at the same time wounds some of those feelings which it has been agreed to call the moral sense of a human aggregation." As emphatically as Lombroso, he insisted upon the necessity of studying the criminal. He concluded that the criminal is an anomaly among human beings. He stressed the psychological characteristics of the criminal, and declared that the typical criminal was a "monster in the psychic order, having regressive traits which take him back to inferior animality; the incomplete, inferior criminals have a psychic organization with traits which bring them close to savages."

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[1] Parmelee, "Anthropology and Sociology in Their Relations to Criminal Procedure," pp. 9–47, The Macmillan Company, 1908; Lombroso, "Criminal Man," introduction by his daughter, pp. 12–20, G. P. Putman's Sons, 1911.

[2] Lombroso, "Crime, Its Causes and Remedies," introduction by Parmelee, pp. xii–xxxii, Little, Brown & Co., 1911. Lombroso seems to have regarded tattooing as an atavistic trait, but it is only a habit, which could not be transmitted by hereditary means. See comment on Lombroso's biological information, p. xxxi.

Ferri (1856–1929), the third of the founders of the new science of criminology, was much more synthetic in his treatment of criminological problems. He described what he called "criminal sociology" as a synthetic science, based upon anthropology, psychology, criminal statistics, penal law and penology. According to his view criminal anthropology was to criminal sociology what the biological sciences are to the clinic.

His classification of criminals was given under five categories: (1) insane, (2) born, (3) habitual, (4) occasional, (5) by passion. "Of the two conditions which psychically determine crime—moral insensibility and lack of foresight—the second is the principal one which determines the crime of occasion, while the first determines principally habitual and congenital delinquency."

Next, Ferri discussed the social causes of crime which came from the density of population, the state of public opinion and of religion, the constitution of the family and the system of education, the industrial production, alcoholism, the economic and political organization, the administration of justice and of the police. His study of the data upon the periodic movement of criminality in Europe led to his formulation of the *law* of *criminal saturation* analogous to the law of chemical saturation. "As in a given volume of water, at a given temperature, a determinate quantity of a chemical substance is dissolved, so in a given social sphere with given individual and physical conditions, there is a determinate number of crimes." Since criminal phenomena depend upon natural causes, it is, therefore, possible to modify the effects to the extent that the causes can be modified.

Ferri then applied this law of criminal saturation to the penalties inflicted, usually in the form of imprisonment, in order to determine to what extent these penalties reduced criminality by modifying causes. He concluded that "penalties, far from being the convenient panacea that they are generally considered, have only a very limited power to combat crime." In view of the failure of punishment, he proposed the use of "equivalents" of punishment or changes in the conditions which cause crime.

The fundamental idea of these "equivalents" was "to give to the social organism such surroundings that human activity, instead of being vainly menaced with repression, should be guided continually in an indirect manner into paths which are not criminal and that a free scope should be offered to the energies and needs of the individual, whose natural tendencies will be opposed the least possible, who will be spared as much as possible the temptations to and opportunities for crime."

These "equivalents" of punishment are *preventive measures* used in the interest of social hygiene and are the most effective weapons for the social defense against crime. Ferri mentioned a large number in the following categories: economic, political, scientific, administrative, religious, educational, and also those found in the family, in connection with alcoholism, vagabondage and abandoned children. Some of his penal substitutes were: free trade, freedom of immigration, restriction of the manufacture and sale of alcohol, provision for employment, freedom of speech and of the press, religious toleration, popular education and the protection of neglected children.[1]

GORING'S STUDIES

After much debate between Lombroso and his followers and their opponents over the theory of a born criminal type, Lombroso proposed, in 1899, that his critics select one hundred criminals and one hundred persons who were not criminals and make comparative measurements to determine whether there is a criminal type. The suggestion was accepted, but agreement could not be reached upon procedure, and the work was not undertaken.

In 1901 an English prison official, Dr. Griffiths, formed the idea of subjecting a large number of prisoners convicted of certain similar offenses to accurate measurements in order to ascertain whether they showed any deviation from what might be described as the normal or non-criminal type. Changes in the personnel of the prison medical staff took place and Dr. Goring replaced Dr. Griffiths. With the help of other prison physicians and with the advice of Karl Pearson, more than 3,000 prisoners consecutively admitted to English convict prisons were studied. So great was the undertaking that not until 1908 were all the data compiled and not until 1913 were interpretations and conclusions published.

All the prisoners studied were recidivists, and, consequently, were the individuals who would be expected to compose a criminal type, if such a type exists. Comparison of head measurements of the 3,000 criminals with those of 1,000 undergraduates of Cambridge University showed the differences to be "fairly negligible." Similar results were obtained in comparisons between Oxford undergraduates and inmates of a general hospital and the prisoners. These studies dealt with length, breadth and circumference of head.

Height, width and slope of forehead, the relative magnitude of front to back of head and the general shape and symmetry of the head were especially emphasized by Lombroso. He thought that he could pick people out of the general population as either criminal or non-criminal by the existence or absence of these "cephalic anomalies."

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[1] PARMELEE, "Anthropology and Sociology in Relation to Criminal Procedure," pp. 47–69, The Macmillan Company, 1908; FERRI, "Criminal Sociology," Part II, Chap. V, for his "equivalents" of punishment or "penal substitutes."

Goring compared the prisoners with a group of non-commissioned officers and men of the Royal Engineers (sailors) to test these characteristics. No "anomalies" were found. The contours practically coincided. There was no more and no less "bulging" as to the forehead among the prisoners than with the Royal Engineers. Again Goring concluded that physical stigmata did not exist.

After comparing the Cambridge and Oxford students with prisoners, and with each other, and introducing another university, Aberdeen, Goring declared that "prison inmates, as a whole, approximate closer in head measurements to the universities generally than do students of different universities conform with each other in this regard." With reference to Lombroso's contention about born criminals and the possibility of predicting their future, he said that "from a knowledge only of an ungraduate's cephalic measurements, a better judgment could be given as to whether he were studying at an English or Scottish university than a prediction could be made whether he would eventually become a university professor or a convicted felon."

Color of the hair and eyes, shape of the nose, defective hearing, and left-handedness were also studied by Goring. Comparison was made between the hair and eye color of convicts and of a group of English schoolboys. The boys showed only a very slightly lighter shade of hair and eyes than did the convicts. Since hair and eyes tend to become darker in adult life, the significance of the result is clear. Similar unimportant differences were found with respect to the shape of the nose and left-handedness.

Next, Goring studied possible differences between one group of criminals and another, thieves, forgers, burglars, incendiaries, wife deserters and others. He selected thirty-seven physical characteristics, classified the prisoners on the basis of the crimes committed and compared the different groups as to each characteristic. No evidence was found to indicate that one kind of criminal bears any striking differences from another. The small differences revealed could be explained as due to natural causes. Class distinction with their corresponding differences in environment and manner of living would account for slight variations, such as those between the groups of fraudulent offenders and incendiaries.

Goring's data did not indicate that there were no differences between criminals and the general population, or between different groups of criminals. He did *not* find definite physical anomalies or stigmata that are necessary to constitute a physical type. He *did* find certain very general physical traits, which he described as *an inferiority in stature and body weight.* He believed the inferiority was due to a process of selection. Physique plays an important part in the choice of many occupations. Why should it not be important in crime? Lack of physical strength may account for many criminal careers. Since a considerable number of crimes are committed for which no arrests are made, some selection evidently takes place among those caught. Feebleness may be a factor more conducive to apprehension than strength. Pickpockets, burglars and incendiaries are more likely to be persons of an unnoticeable appearance rather than tall, well-built individuals. Incendiaries in England are for the most part farm laborers, who, because of real or imaginary grievances, fire the stacks of their employers—the "typical revengeful act of a weakling from whom a physical assault would be ineffective." Physique would not seem to exert any selective influence upon fraudulent offenders and Goring's study confirms this conclusion.

The conclusions reached by Goring were that "there is no criminal anthropological type; physical stigmata of crime do not exist; criminals are not differentiated either from the non-criminal population or among themselves by particular characteristics. They do constitute a class inferior in stature and body weight." No evidence has been found confirming the existence of a physical criminal type such as Lombroso and his followers have described. *There is no such thing as a physical criminal type.*

Criticism has been directed toward Goring's results because of his use of the statistical method. Such a reaction is sound in so far as it applies to the subjective or personal causes of crime, but it is difficult to see how it applies to the investigation he undertook to make. The existence or non-existence of physical stigmata can be proved or disproved only by the measurement of human beings and the careful correlation of the data obtained.

When Goring left the field of measurable physical characters and entered that of mental attributes and the forces of environment, he was on slippery ground. He had no standards for measuring mental ability, and his general conclusion that defective intelligence is one of the important causes of crime was not reached in a scientific manner. He was not aware of the many different kinds of mental disease that may cause antisocial conduct. His elimination of the "force of circumstances" as having little or no causal relation to crime is unimportant because it was a mere *obiter dicta* not supported by any of the facts considered in his inquiry. He was not at all interested in the social aspects of crime.[1]

Lombroso's Theory of Crime

Lombroso's theory of crime was a biological theory into which he attempted to introduce social and psychological factors in the later years of his life. He believed that the criminal was an organic anomaly, partly atavistic and partly pathological. The social causes were, in his opinion, the stimuli that called forth the organic and psychical abnormalities of the individual. He regarded the removal of the social causes of crime as the immediate problem of criminologists, but as the roots of crime are in the atavistic and degenerate heredity of the born criminal, only the eradication of these sources of criminality can offer a final solution to the problem of crime.

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[1] Goring, "The English Convict" (abridged edition), preface, introduction and pp. 9–33, Stationery Office, London, 1919; Wines, "Punishment and Reformation" (revised edition by Lane), pp. 249–264, Thomas Y. Crowell Company, 1919; Holmes, "The Trend of the Race," pp. 73–94, Harcourt, Brace & Company, 1921.

Lombroso has demonstrated that crime has biological roots. He implies that the normal individual biologically could not become a real criminal. Social conditions, therefore, could not create a true criminal out of a normal man, although they may be necessary to bring out the latent tendencies in the abnormal or degenerate person. He ignored the fact that crime is cultural and social rather than organic or biological. The great stress laid by Lombroso upon organic conditions obscures the essential character of criminality.

Crime is a form of social maladjustment and is largely a phenomenon which civilization has produced. There is little crime among savages because life is so simple that much intelligence and training of the individual is unnecessary to provide that he shall form habits in harmony with those of his group. It is a question whether any of us would be honest and moral if we were not taught to be so by society. The child learns to restrain many instinctive tendencies, which might lead to crime, during his years of preparation for life at home and in school.

If crime is a form of social maladjustment produced by the development of bad habits in the adolescent individual, the question remains how largely these habits are determined by the biological nature of the organism. Habits are rooted in the instincts and instinct is a biological matter. Mentally defective persons are incapable of development beyond childhood or early adolescence. With such individuals instinctive tendencies dominate the whole character. They may be described as "born criminals."

Normal persons without mental defects may fail to build up the habits necessary to adjustment to complex social life because of low and vicious surroundings. Everyone has the potentialities of crime in his make-up.

Lombroso failed to see the importance of social conditions in connection with crime. The difference between the student in the university and the boy in the reformatory is frequently due to the accident of social environment. His great merit was that he called attention to the class of defectives or degenerates in whom organic abnormalities are the chief causes of criminal tendencies. He estimated this class to compose about one-third of the total criminal class. His great mistake was in extending the influence of the organic factor over the whole class of criminaloids—individuals who are criminal or not according to the circumstances under which they happen to live.

There is no definite criminal type, but the criminal who is a defective exhibits more or less of the stigmata of degeneration. The so-called "born criminal" is simply a mentally defective person, who, from tendency and opportunity, becomes associated with the criminal class. The criminal class is not essentially different from the pauper class. As the nucleus of the group of legal paupers is composed of individuals so organically defective that they cannot adjust themselves to society, so is the nucleus of the criminal class made up of "born criminals," that are merely defective persons that have happened to become criminals rather than paupers, or inmates of insane hospitals, or institutions for the feeble minded.

"One thing Lombroso's work has definitely accomplished is that the criminal man must be studied and not simply crime in the abstract; that the criminal must be treated as an individual and not his act alone considered. The individualization of punishment is something which Lombroso's work, more perhaps than that of any other man, has helped to bring about." These goals are still far in the future so far as our present-day practice is concerned. The ideas worked out by Lombroso from 1864 to 1876 have by no means permeated our criminal law and *penal* administration.[1]

The Classification of Criminals

Lombroso undertook to classify criminals—his "born criminal" forming a starting point. Ferri accepted his designations of "born," "insane," "occasional" and "by passion" and added the *habitual* criminal. Garofalo devised a classification upon a psychological basis as follows: typical, violent, deficient in probity and lascivious criminals. Parmelee describes this classification as "vague, not comprehensive, and not self-consistent."

For many years following the example of the Italians, criminologists felt themselves compelled to work out classifications of criminals usually with variations from those of other authorities. Aschaffenburg, the German criminologist, produced the following classification: chance criminal, criminals by passion and by opportunity, deliberate (burglary), recidivists, habitual and professional. Ellis, an English follower of Lombroso and Ferri, proposed another classification: political criminal, criminal by passion, insane, instinctive, occasional, habitual and professional. After an excellent criticism of these classifications and others, Parmelee added one of his own, similar in its elaborateness and of the same general character. His classification included the feeble-minded criminal, the psychopathic, the professional, the occasional and the *evolutive* (political criminal).

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[1] Adapted from Ellwood, Lombroso's Theory of Crime in the *Journal of Criminal Law and Criminology*, vol. II, pp. 716–723, January, 1912. This article was suggested by Lombroso's death in 1909 and some recent publications edited by his daughter.

Ellwood refers to Ellis' classification as "difficult to determine the basis of." Ferri's he regards as "somewhat simpler and perhaps easier of practical application" but not founded upon any clear principle. A simpler and clearer classification was proposed by August Drähms, an American writer, in his book, "The Criminal," published in 1900. He concluded that all types of criminals could be classified under the three heads: instinctive, habitual and single offenders. Ellwood believes that "this classification is thoroughly scientific and easily applied in courts of law and in other penal institutions dealing with the criminal class, and the practical recognition of the three classes is a necessity for scientific criminal jurisprudence." Professor J. L. Gillin, however, regards it as "too simple," and adds one of his own under three main heads with four subdivisions under two of the chief divisions. The main heads are political, occasional and natural. Under *occasional* are grouped accidental, eccentric, by passion, and single offender, and under *natural* are placed moral imbecile, insane, feeble minded and epileptic.[1]

According to Professor Ellwood:

> The classification of criminals is not simply a matter of theoretical interest; it is also a matter of great practical importance for the proper treatment of criminals in our courts of law and in our correctional institutions. Some classification there has always been as a juridical necessity. But the legal classification is not so much one of criminals as of criminal acts. While such a classification is a practical legal necessity, it has been found inadequate for that scientific treatment of the criminal which is now generally recognized to be socially desirable. The evident inadequacy of the legal classification has led criminologists to propose other classifications, not to supplant the legal classification, but to supplement it, so as to enable courts and prison officials to better understand the criminal and to better individualize treatment.
>
> The three classes [proposed by Drähms] show distinctly the three different sets of causes at work in producing crime: the biological, affecting the hereditary equipment of the individual; the social, affecting his social training and adjustment; and the individual psychological, affecting the person's moral decisions momentarily. It ought not to be difficult when we have traced crime to these three different roots to find ways of controlling, if not eradicating it. To eradicate crime and the criminal from society only requires that man shall attain to the same mastery over the social environment which he has already practically attained over the physical environment.[2]

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[1] Blackmar and Gillin, "Outlines of Sociology," rev. ed., pp. 530–536, The Macmillan Company, 1923; Parmelee, "Criminology," pp. 186–206, The Macmillan Company, 1918.

[2] Ellwood, The Classification of Criminals in the *Journal of Criminal Law and Criminology*, vol. I, pp. 536–548, November, 1910; Parmelee, "Criminology," pp. 186–206, The Macmillan Company, 1918.

More recently criminologists have refused to make classifications of criminals. Recent studies of delinquents have resulted in the conclusion that there is no distinct type of criminal—only slight differences between criminals and non-criminals are found. As a class criminals have been found guilty of violating laws, but this does not carry with it any implication of physical or moral inferiority as a class. After a careful survey of the causes of crime and the composition of the criminal population, Sutherland concludes that "there is very little in this survey that shows a distinct type of people who commit crime. So far as there is any evident type it is the young-adult man living in the city; perhaps the Negro should be included in this type, but it is by no means certain that the greater criminality is a racial rather than a cultural or economic trait. There seems to be little difference between criminals and non-criminals with reference to mentality or nationality."[1]

Two illustrations may be used to confirm Sutherland's statement. One declares that "there may be easily selected from a thousand prisoners one hundred who, properly clad, could pass for the judge, jury, lawyers, court officers and principals in an important civil suit."[2]

> In a conversation with Sir Edward Henry, the head of Scotland Yard, he was asked "if there is a distinct criminal type, a separate marked class of men." Without hesitation his answer was, "No, there is not." Then he told of an expert who came claiming ability to detect a criminal by his face. To him were handed two photographs, one of them a picture of a professional criminal. The expert pointed confidently to one, saying, "This is the criminal." With a twinkle in his eye, Sir Edward said that the photograph thus pointed out was that of a bishop in the Established Church.[3]

Review Questions

1. Who was Beccaria and what was his contribution to criminology?
2. What was the fundamental theory of the classical school of criminology?
3. What relation does it have to existing legal systems?
4. When was it first embodied in a penal code?
5. Name the three principles of the classical school?
6. Name the three founders of the positive school of criminology?
7. What were the contributions of each?
8. Explain the law of criminal saturation.
9. Explain equivalents of punishment.
10. Explain natural crime.
11. Explain psychic monster.
12. How did Lombroso develop his theory of the born criminal?
13. What are some of the marks of the born criminal?
14. Are there born criminals? What were the results of Goring's studies?

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[1] Sutherland, "Criminology," pp. 24–25, 110, J. B. Lippincott Company, 1924.

[2] Buckley, The Present Epidemic of Crime, in *The Century*, vol. LXVII, pp. 149, November, 1903.

[3] *The Outlook*, vol. XCVII, p. 404 Feb. 25, 1911.

15. What other classes of criminals did the positive school recognize?
16. What is the significance and importance of the work of the positive school?
17. How has it modified the treatment of the criminal?
18. What classification of criminals did Drähms propose?
19. What are the advantages of this classification?
20. Has the classification of criminals any practical importance? What is Sutherand's conclusion as to the existence of a distinct type of criminal?

Topics for Investigation

1. Describe the explanations of crime that were accepted in medieval and early modern periods. See Sutherland, "Criminology," pp. 72–75.

2. Explain the origin of the classical school of criminology and its relation to the French Revolution. See Parmelee, "Anthropology and Sociology in Relation to Criminal Procedure," pp. 9–16, and Phillipson, "Three Criminal Law Reformers," Part I.

3. Discuss the theories of Lombroso. See Ellwood, Lombroso's Theories of Crime in the *Journal of Criminal Law and Criminology*, pp. 716–723, January, 1912, and Lombroso, "Criminal Men," introduction and Part I, Chap. I.

4. What did Ferri mean by "criminal sociology"? See Ferri, "Criminal Sociology," Chap. I and the *Journal of Criminal Law and Criminology*, pp. 179–181, August, 1919.

5. What were Garofalo's theories of crime? See his "Criminology," Part I, Chap. I.

6. Describe Goring's studies and criticize his conclusions. See Goring, "The English Convict," introduction and pp. 9–34.

7. Describe Ferri's equivalents of crime and penal substitutes. See Ferri, "Criminal Sociology," Part II, Chap. V.

8. Study the conclusions of Ellis in regard to the work of Lombroso. See Ellis, "The Criminal," prefaces, Chaps. I–II, V and Appendix E.

9. Compare Schlapp and Smith's "New Criminology" with the work of Lombroso. See Book I, Chaps. I–III.

10. Discuss the heritable basis of crime and delinquency. See Holmes "The Trend of the Race," Chap. IV.

Selected References

1. Gillin: "Criminology and Penology," Chap. XV.
2. Parmelee: "Anthropology and Sociology in Relation to Criminal Procedure," Chaps. I, II.
3. Parmelee: "Criminology," Chaps. IX-XII.
4. Wines: "Punishment and Reformation," Chap. XI.
5. Holmes: "The Trend of the Race," Chap. IV.
6. Travis: "The Young Malefactor," Chap. II.
7. Ellis: "The Criminal," Chaps. I, II, V.
8. Goring: "The English Convict," introduction and pp. 9–34.
9. Parsons: "Crime and the Criminal," Chaps. III–V.
10. Phillipson: "Three Criminal Law Reformers," Part I.
11. Schlapp and Smith: "The New Criminology," Book I.
12. Lombroso: "Criminal Man."
13. Lombroso: "Crime, Its Causes and Remedies."
14. Ferri: "Criminal Sociology."
15. Garofalo: "Criminology."

CHAPTER III

THE INDIVIDUAL DELINQUENT

Our legalistic methods largely ignore the individual and group factors in crime. The traditional emphasis upon freedom of the will and personal responsibility obscures the influence of the social situation in connection with criminal acts. Better administration, more efficient officials, and simplification of court procedure, together with more certain punishment will improve the administration of justice, but will not alter fundamentally the existing crime problem. Any scientific approach must include a consideration of sociological factors.

Crime is a form of human behavior and there can be no satisfactory control of behavior except control based on a knowledge of the factors producing behavior. We need facts and information rather than mere emotional reactions to particular crime situations. The best contribution to a solution of the problems involved in so-called "crime waves" is the gathering of knowledge about the mechanisms by which crime is produced.

The existence of scientific information will not insure its use, but until we know much more about human behavior in an exact way we cannot hope to have it used by the courts. Even in the case of mental disorders much expert knowledge is still regarded with suspicion and is often entirely ignored by judges, lawyers and juries. Under the criminal law the defense of insanity may be introduced in behalf of a person accused of crime. It may be pleaded either that he was of unsound mind at the time when the criminal act was committed, or that he is mentally ill at the time of trial. Appropriate procedure is provided for by law in both cases.

On different occasions, persons accused of crimes in Massachusetts were arrested, tried, convicted and sentenced to imprisonment. Upon their arrival at the penal institution the prison physicians, in making physical examination of the prisoners, discovered that their underwear bore the labels of an insane hospital, and it developed that they were escaped patients. Why did not the police, the prosecutor, the judge and jury question their mental soundness and take the steps provided by law in such cases?

In California a youth of seventeen, who had never committed a serious offense, was persuaded by another to commit a burglary. As they entered the house one of the occupants raised a revolver; in the excitement the youthful burglar, shooting blindly, killed the head of the household. On his trial, testimony was introduced that showed him to be an "imbecile" though "not insane in the ordinary contemplation of the term." He was found guilty and a motion for a new trial was denied by the judge. From this denial appeal was taken. Accompanying the motion for a new trial were affidavits by four experts, who found the mental age of the accused to be approximately ten years. On appeal, however, the judgment of the trial court, and the order denying the new trial, were confirmed by the Supreme Court.

Another important point was urged on appeal. Under the Juvenile Court Act of California, the defendant, who was under eighteen years of age, should have been given the benefit of the equitable procedure provided for in that court. Since the juvenile court law is mandatory, it would seem that the court could hardly ignore it. Nevertheless, the judgment of the trial court was affirmed. In spite of petitions for clemency to the Governor from many important organizations and prominent private citizens, this boy, after several reprieves, was finally hanged, as was his almost equally defective associate.[1]

Aside from its interest as a manifestation of legal procedure, this California case illustrates the fundamental importance of the study of the individual delinquent. No legal decision can be, or ought to be made, regardless of the personal characteristics of the individual before the court. Extenuating circumstances and insufficient knowledge of right and wrong are recognized reasons for modification of the ordinary course of justice. For a crime to be committed there must be both an overt act and a culpable intent. Children and insane persons cannot commit crimes, according to the courts, because they cannot intend to do wrong. Since children in some juvenile court laws are defined as those under eighteen or twenty-one years of age, many children know more about the difference between right and wrong than do feeble-minded adults, or ignorant adults, or even average adults. The state must take cognizance of these acts, but in order to react intelligently rather than emotionally to them, it must attempt to deal with the actors in such ways as to prevent a recurrence—preventing repetition rather than punishment for past actions is the rational principle to be followed. Such a principle involves a careful study of the individual criminal in each case.

PIONEER WORK OF DR. WILLIAM HEALY

Diagnosis of individual offenders is an established part of the work of a few courts and an increasing number of correctional institutions. In general, juvenile courts and reformatories were the first to perceive the advantages of diagnosis, though several prisons have recently established clinics for such study.

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[1] GLUECK, "Mental Disorder and the Criminal Law," pp. 3–7, Little, Brown & Co., 1925.

As a result, the profession of the clinical or diagnosing criminologist has come into existence. The leaders are, for the most part, specialists in psychiatry with special training in psychology and medicine. They are also informed as to social work and educational methods.

The clinical criminologists have not as yet won the attention of the general public. For the most part their discussions become known at scientific meetings or in scientific periodicals. Judges, prison wardens, probation officers and others who have to do with criminals do not, as a rule, recognize the importance of their contributions. Even when it is admitted that human behavior may throw light on the nature and causes of crime, it is not thought that each individual requires study.

For the real beginning of the new criminology we must turn to the Juvenile Psychopathic Institute, organized in Chicago in 1909, with Dr. William Healy as director. This was a private organization established for the purpose of securing studies of the young offenders brought before the juvenile court. Funds for a five-year program were provided and a group of jurists, psychologists and others acted as an advisory council. At the end of five years the county took over the institute and made it a part of the juvenile court supported by the public funds.

The results of the work are summarized in Dr. Healy's pioneer volume, "The Individual Delinquent," published in 1915. In that study 1,000 repeated offenders are dealt with, most of them around the ages of fifteen and sixteen years. Case histories are given in abundance. The methods of diagnosis, the causes and types of criminality and suggestions for treatment are set forth.

Dr. Healy remained in Chicago until 1917, when he went to Boston, where he has continued his work with the Judge Baker Foundation, an endowed organization which cooperates with the juvenile court and private agencies for the study of juvenile delinquents. In 1919 Drs. Healy and Bronner published a series of twenty case studies, covering a wide range of problems of interest to educators, psychologists, psychiatrists, sociologists, judges, probation officers and all who deal with matters involving the adjustments of young people. These studies follow a systematic plan which has gradually been worked out in the actual handling of cases in Chicago and Boston. The aim is to do intensive and all-around work from the standpoint of the psychological, medical and social sciences.

In 1926 the same authors issued "Delinquents and Criminals" as an attempt to estimate just what has actually been accomplished through the handling of groups of offenders in Chicago and Boston. Utilized for the study were three groups of juvenile repeated offenders with later careers traced: two groups in Boston were studied and one in Chicago;

the years covered were between 1909 and 1914, 1918 to 1919 and 1921 to 1923. The results represent the experience of many years of actual study of delinquents together with comparisons and interpretation of the data. It contains some of the best scientific work yet undertaken in the analysis of the causes of crime.[1]

The scientific study of juvenile delinquents has been emphasized because it is during the youthful, formative periods of life that tendencies toward social misbehavior begin, and this is the time to gain understanding of causes and beginnings and is the time to thwart such warpings of character and habit. Studies in Europe and the United States have made it stand out clearly that criminal tendencies and careers with astonishing frequency begin in childhood and adolescence. And why should we expect it to be otherwise? Do not we know well enough that in all of us the development of behavior tendencies, the set of our characters and of our habits of thought and action begin long before adult life?

Diagnosis of individual cases is the discovery of those elements in the constitution and history that bear upon delinquency. It forms the scientific and common-sense approach to a rational and comprehending criminology. Its aim is to establish the connection between delinquency and the offender's life history. To do this it must make use of every resource known to the student of conduct. The results may lead to an improved method of handling the individual studied and will add to the sum total of our information concerning the causes of crime.

ILLINOIS DIVISION OF CRIMINOLOGY

In 1917 the Institute for Juvenile Research became an integral part of the Division of Criminology which is included in the Department of Public Welfare of the State of Illinois. In that year Dr. Herman M. Adler, Professor of Psychiatry at the Harvard Medical School, accepted the newly created position of state criminologist and also became director of the institute. The work was organized to cover the entire field of delinquency and criminality. It includes, therefore, not only the institutional cases in the correctional schools, the reformatory and the penitentiaries but also the earlier stages of behavior disorders, particularly in the juvenile field. One part is concerned with the study, classification and treatment of the prisoners in the various institutions. The other section deals with the preinstitutional phases and is carried on in connection with the Juvenile Court of Chicago, and with courts, schools and social agencies throughout the state.

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[1] WINES, "Punishment and Reformation" (revised edition by Lane), pp. 265–311, Thomas Y. Crowell Company, 1919; HEALY and BRONNER, "Delinquents and Criminals," The Macmillan Company, 1926, Judge Baker Foundation Case Studies, Boston, 1922–1923.

When the Division of Criminology was established it employed only three persons. Now there are about ninety connected with it. There are resident mental health officers at the penitentiary at Joliet and at the reformatory at Pontiac. The penitentiary at Menard and the state hospital for the criminal insane at Chester are given part-time service. Two psychologists spend the larger part of each week at the correctional schools for boys and girls. Another psychologist divides his time between Joliet and Menard. In addition, the institutions at Joliet, Menard and Pontiac are each provided with a clerk.

There are five clinics in and about Chicago working so closely in connection with the institute that they are really branches. Another phase of the work is its state-wide service. A traveling clinic, equipped to give the same examinations and recommendations for treatment as are given at the Chicago headquarters, is sent to a number of cities.

Among other activities is the cooperation of the staff with the better baby conferences held at county fairs and other similar meetings in different communities. There are about twenty-five conferences each summer at which nearly six thousand children are given mental tests.

The most important recent development has been the establishment of the Behavior Research Fund as the result of a campaign conducted by the friends of the institute. This fund is to be devoted to the intensive study of human behavior problems for a period of five years. Only a small portion of the human material presented to the institute can be studied in connection with the regular work. Research is necessary so that diagnosis, understanding and the technique of treatment may be improved in the light of further knowledge. Of the six thousand admissions annually to the Juvenile Detention Home in Chicago, only a small percentage of the most urgent and difficult cases are adequately studied. It would be impossible to find anywhere a better supply of clinical material for research purposes. Under the Behavior Research Fund, Dr. Clifford R. Shaw, research sociologist, has carried on investigations of the causes of juvenile delinquency in the urban community. Although there is a large amount of published material in regard to the relationship of social factors and delinquency, there is very little of a scientific character. One of the most significant results of the study of delinquency has been the proof of the existence of a close correlation of the areas of delinquency with the areas where dependency, poverty, mobility of population, adult crime and family disorganization are most apparent. This work has been recently published by the University of Chicago Press under the title, "Urban Delinquency Areas."

The mental health officer at Joliet has an office in the staff headquarter's building. All prisoners are given a routine examination a few days after admission. They are asked to fill out a questionnaire, the purpose of which is to discover the facts of their childhood, schooling, work record, social interests and activities, previous criminal record and as much as possible of their heredity. After a few days they are given a group intelligence test. Those who fail to make an average rating are given an individual test. All short-term men are seen and examined before their first appearance before the parole board at the end of eleven months.

Some men are examined and reexamined several times during the course of a year. Some are discovered in the routine examination, others are referred by the warden or other executive officers because of frequent violations of prison regulations or resistance to discipline, and some make voluntary requests for assistance because they themselves find difficulty in making a satisfactory adjustment to prison life. Recommendations are made regarding the kind of work which they are given and their treatment is conducted on the plan of an out-patient clinic.

The mental health officer also assists in the administration of the progressive merit system. His report regarding the personality, character and mental condition of violators of prison discipline is frequently a deciding factor in determining the course of action. Through sympathetic understanding, personal encouragement or judicious supervision many men have been changed from habitual violators to trustworthy inmates.

At the reformatory at Pontiac the mental health program has been extended, since a resident mental health officer was assigned to the institution in May, 1926. Preliminary reports have been made for all newly admitted cases, also notes of the progress of men during the first year of confinement and final reports at the close of the minimum sentence or first parole hearing. Many of the older cases have been reexamined. In the other penal institutions the work has been more limited because of the lack of a resident staff.

The relation of the division to other divisions of the department of public welfare is advisory only. It has no executive or administrative responsibility and issues no orders and initiates no changes. In actual practice there has been the closest cooperation between the divisions. Frequent consultations and constant exchange of information and ideas in regard to individual prisoners and general policies has prevailed.

The preventive work of the division is carried on under the Institute for Juvenile Research. It represents the efforts made to reach behavior problems during childhood when constructive measures are applicable.

Extension clinics are held at the request of various organizations in different communities. To a number of places the psychologists make regular visits once or twice a month. This work has resulted in the discovery of a great many interesting and not unimportant personality and social problems, and in many cases they were relieved. Several instances were found where pupils were having difficulties with their studies or were not keeping up with their classes. An examination showed ample intelligence and ability to pass through high school and college. The seat of trouble was located in the emotional life or in the family relationship, the harmful effect of which neither the child nor the family had recognized. This experience suggests that every school has within its walls a need for this type of work. The lack of understanding of such pupils and the means of dealing with their perplexities must result continually in disturbance of progress and in the ruin of successful careers to an unsuspected extent.

The principal of the LaSalle-Peru High School has organized a bureau of educational counsel. The director is employed as a full-time official. She makes the contacts with the pupils, the parents and teachers as well as the preliminary investigations. Once a month a unit from the institute visits LaSalle and spends one to three days in the examination and treatment of the problem cases.[1]

Ohio Bureau of Juvenile Research

In 1913 Ohio established a Bureau of Juvenile Research for the purpose of investigating the causes and motives of juvenile misconduct or delinquency. The first few years were ones of "plans, preparation and poverty." No money had been appropriated for buildings or equipment. With very little support the first director was able to investigate and study juvenile problems throughout the state and accumulate data of five thousand children. As a result of his efforts the legislature voted one hundred thousand dollars for new buildings and additional funds for equipment and maintenance. From 1918 to 1922 Dr. Henry H. Goddard, who came from the Vineland (New Jersey) Training School, was in charge of the work of the bureau. Originally under the control of the Board of Administration, in the reorganization of the state government, it became a part of the Department of Public Welfare.

The code provides that children committed to the department may be assigned to the bureau for "the purpose of mental, physical and other examination, inquiry or treatment for such periods of time as seem necessary." Within recent years judges of the juvenile courts throughout the state have been committing cases apparently in need of expert examination directly to the bureau.

Children of the county homes, orphanages, hospitals, schools or from their own homes may be brought to the bureau for examination and advice concerning their care, education and medical state. The bureau devotes one day a week to such cases. From time to time local surveys of public schools and orphanages have been made. Thousands of children have been examined in this manner. More recently, periodic examinations have been made of all cases admitted to the state industrial schools for boys and girls.

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[1] *Annual Reports of the Division of Criminology, Illinois*, 1920–1928; The Bureau of Educational Counsel, La Salle, Illinois, 1923–1926.

Field clinics are conducted in different parts of the state for the benefit of reputable agencies having to do with social groups. As a rule the clinic lasts one day, but in a number of instances two and three days are required to complete examinations. Requests for the clinics come from school authorities, social organizations, the Red Cross and the courts. This type of work is very important, and it is unfortunate that the staff has not been of sufficient size to carry it on and extend it to the entire state.

The Ohio Bureau has been limited to work with juveniles, as its title indicates. It has had no connection with the penal and correctional institutions for adults. Neither in comprehensiveness nor in financial support has it been as fortunate as the Illinois institution.[1]

In 1924 Massachusetts passed a law providing for the physical, psychiatric, psychological and social examination of the inmates of county jails and houses of correction. A Division for Examination of Prisoners under the Department of Mental Diseases was inaugurated by Dr. Ralph Chambers and is being carried on by Dr. Winfred Overholser. Elaborate case histories, numbering over 6,000 in 1929, have been gathered and should prepare the way for valuable research into the composition of the population of institutions for minor offenders. They also form the basis for recommendations made by the division to the Department of Correction, suggesting the transfer of prisoners from one institution to another, or various forms of social treatment in the community on their discharge. Massachusetts already had provisions for the examination of inmates of state penal institutions and, in 1921, had enacted a law (the Briggs Law) for the examination of persons indicted for a capital offense and persons indicted or bound over for a felony who are known to have been previously convicted of a felony or to have been indicted for any offense more than once. These examinations are made by two psychiatrists assigned by the Department of Mental Diseases. Massachusetts is also developing a series of special institutions for dealing with different types of offenders as they are being discovered and defined by the use of scientific methods.[2]

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[1] The Bureau of Juvenile Research, Ohio Department of Public Welfare, *Reports*, 1918–1920 and 1920–1922.

[2] See later in this chapter for further discussion and also in Chaps. V and XI. Overholser, Psychiatry and the Massachusetts Courts as Now Related in *Social Forces*, vol. VIII, pp. 77–87, September, 1929; Overholser, Psychiatry as an Aid to the Administration of Criminal Justice, in *The Annals* vol. CXLV, pp. 23–30, September, 1929.

The Commonwealth Fund Program

In November, 1921, the Commonwealth Fund adopted a program of community demonstrations and training of workers in the field of the mental hygiene of childhood. The various activities under the program, as set up and put into operation early in 1922, were administered by four cooperating organizations with the aid of appropriations granted periodically. The program for the prevention of delinquency was essentially an effort to promote community services for the understanding and guidance of behavior problem children.

The aims were to demonstrate the methods used by child guidance clinics for children and by visiting teachers in the schools. The program was based on the recent notable advances in the study of behavior from the psychiatric and psychological point of view. The conviction is spreading that an adequate understanding and treatment of the personality difficulties of children not only offer the possibility of early discovery and prevention of delinquent trends but also may mean, in many cases, the removal of conflicts and the cure of habits likely to lead to unhappiness, inefficiency and failure in adult life.

The Joint Committee on Methods of Preventing Delinquency was organized especially for the purpose of providing a coordinating agency and to interpret methods and results through publications. Attention has been given to the preparation of case studies and narratives. In such concrete material it is possible to show the ways by which psychiatry, medical science, social case work and psychology contribute to the technique applied in the effort to bring about the adjustment of children who present behavior problems.

Since the beginning of the Commonwealth Fund program, demonstration clinics have been operated and permanent child guidance clinics established in St. Louis; Dallas, Texas; Los Angeles; and at the University of Minnesota for the cities of St. Paul and Minneapolis. Various other cities have been assisted in the establishment of clinics.

For the promotion of visiting teacher work thirty communities were selected and the services of visiting teachers were offered for a three-year demonstration period during which the committee would pay two-thirds of each salary if the local community would pay the rest. The choice of the communities and the assignment of teachers was completed early in 1924. They presented the desired variety of size, type and geographical location. Twelve demonstrations closed in June, 1925. By July 1 of that year ten of the twelve communities had voted to continue the work as part of the regular school activities. Ten more demonstrations closed in June, 1926, and all of the communities decided to continue visiting teacher work. Twenty-four cities of the thirty selected continued the work at local expense following demonstrations. Four cities failed to continue, two were given additional time and three discontinued permanent work after one year.[1]

THE DELINQUENT AS A PERSON

The study of the delinquent as an individual was introduced by Dr. William Healy in his volume, "The Individual Delinquent." His research brought out one significant fact that the study of the criminal is a study of human behavior and not the study of a special biological variety of the human race nor of a separate social class. He conceived of his objective as a search for all the influences, factors and forces which control behavior. His technique was highly developed in the individual aspects of the behavior of delinquents because of his training in psychiatry and psychology. His search for the concrete materials of the mental life of the individual led him to some appreciation of social influences, and his use of the case-study method made it impossible for him to ignore the play of social forces.

The study of the individual, of the reaction of the organism to its environment, falls in the fields of psychiatry and psychology. The study of the person, the product of social interaction, lies in the domain of sociology.

Professor E. W. Burgess of the University of Chicago has extended to the study of criminology the distinction between the delinquent as an *individual and as a person.*

> The person is an individual who has status. We come into the world as individuals. We acquire status and become persons. The individual has some status in every social group of which he is a member. Sudden loss of status—the collapse of one's social world—is perhaps the greatest catastrophe in the life of a person. Few people ever "come back" after a complete loss of status.
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> Personality may be regarded as the sum and coordination of those traits which determine the role and status of the individual in the social group. Certain traits as physique, mentality and temperament affect social standing. Primarily, however, position in the group will be determined by personal relations such as group participation, character, personal behavior pattern and social type.

The significance of the distinction between the individual and the person for the study of behavior is illustrated by the case of a boy of fourteen whose individual handicap, a special defect in mathematical ability, affected his status in his social group. "They put me in the feeble-minded room," he said, "and I ain't feeble-minded; I just can't do fractions." After he was placed in the subnormal room, he became truant, disobedient and was much given to fighting. When talked to about fighting, he declared that he did not want to, but that the boys said he was feeble minded, and he had to fight them till they quit saying it. After three months' help by a tutor, his school work improved and his truancy and fighting perceptibly diminished.

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[1] Commonwealth Fund Program for the Prevention of Delinquency, *Progress Report*, 1926; The Commonwealth Fund, *Annual Report*, 1927; The Child Guidance Clinic and the Community, a group of papers written from the viewpoints of the clinic, the juvenile court, the school, the child welfare agency and the parent, published by the Commonwealth Fund, 1928; List of Psychiatric Clinics for Children in the United States, Children's Bureau publication 191, 1929.

As an individual the boy had a special defect in mathematical ability; as a person he suffered a loss of status in his group. Superficial observation charged him with the delinquencies of truancy and fighting. Actually he was struggling to maintain his status.

Of instances of mutation in status, a simple example is that caused by change of residence. A person who has lost status in his home town by failure, misconduct or crime may undertake in a distant community "to make a fresh start" or "to begin life over again." Healy found, in cases of delinquent children, that a change of neighborhood by the family resulted in a higher ratio of success in reformation.

The technique of the study of the individual is much further developed than that for the study of personality. Physical examinations are now based upon the results of the latest researches of medical science. Since 1905 to 1911 when Binet and Simon devised a scale for the measurement of intelligence, mental tests have been constantly undergoing revision and standardization and are now very widely used. Attempts have been made to gage emotional reactions and to measure will reactions. Factors like participation in groups, character, personal behavior patterns and social types may not be possible subjects for quantitative measurement, but until further investigation has been undertaken we have no basis for the abandonment of all hope of securing such data. The extent of membership in groups, the degree of intimacy of membership in one group and the classification of character would seem to lend themselves to comparison by means of social norms to be obtained by the use of quantitative methods. The extent of membership in groups may be treated as the ratio of the groups with which a person is connected to the total number of groups in which membership is open to him. The degree of intimacy of membership in a group may be expressed as a fraction of total leisure time devoted to the group.

Mentality, temperament and will are influenced by social experience and also modified by education and social contacts. Personal behavior patterns are formed and shaped by the social interactions of the family and neighborhood. The social type or the philosophy of life are obtained by the imitation of others. Personality is the resultant of the play of social forces in infancy and early childhood.

The egocentric behavior of the "only" or "favorite" child, the "imaginative introspective" type of personality of the "ugly duckling" in a good-looking family and the development of an inferiority complex about physical or mental inferiority are familiar or common sense illustrations of the way in which social conditions and social situations shape personality.

Normal social development requires a congenial social world in which the wishes find expression. Suppression of wishes tends to result in their expression in perverted forms. Frequently the blame is placed by social workers upon the refusal of a person to cooperate in spite of the "good chances" offered. Sympathetic social analysis may show that the alleged chances afforded no real opportunity because the fundamental wishes of the individual were ignored. The following case is an illuminating example of a life "wrecked" through an assault upon the standing of the person among his fellows.

This is the case of a young man about twenty years of age whose character has been very much affected by unusual home conditions. He bids fair in spite of excellent qualities to develop an antisocial attitude. All of his family with the exception of his mother have the reputation for exceedingly irregular moral behavior. The father is a notorious gambler and a man who has always gone with "loose" women openly. He is a man of fine presence, large, powerful, bold, with a straightforward "devil-may-care" attitude. He spent several adventurous years in South Africa and acquired a courage and strength of will that made him feared and admired. He is a most agreeable and friendly man, but has a violent quick temper. An older son and daughter have also both been sexually irregular, but the conduct of the younger son as a high-school boy had been irreproachable.

Difficulties arose because the young man has naturally made friends with boys of respectable families and associated with them down town but was seldom asked to their homes. In the last five years he has become more and more bitter. The older brother had poor physique and all of his father's bad habits with none of his good ones. This young man is a youthful image of his father, has vigorous health, is strikingly good looking and as for intelligence was able to keep near the head of his class all through high school without doing much work. He has such a frank, honest, sportsmanlike way with him that he makes friends everywhere he goes. But he is proud as Lucifer, more so than his father. Generosity with money is one of his outstanding qualities. He went to college with some of his high-school friends and was greatly enraged, humiliated and deeply hurt because their parents did everything in their power to prevent the boys going to the same college with him.

This incident brought to a head all the long series of little snubs and cuts that had not made so much difference when the boy was younger. I saw him the day before he left and it was evident that nothing in his life had ever affected him so deeply. He seemed to feel that some tragedy had occurred from which he could never recover. He was furiously bitter about the whole affair. He had some reason to feel resentment, for his own conduct had been almost beyond reproach. The only possible bad habits of which he could be accused were smoking and gambling. He did not practice either to excess. None of his family were drinkers and he seemed to be free from their common disposition to sexual irregularities.

He did excellent work in college but he could not get over the injury to his pride. He became morose and would not accompany his friends to social functions, although, of course, he was far away from all slanderous tongues. His friends almost unconsciously, perhaps, were not as cordial and intimate with him as before. At any rate, on his part, or on theirs, a change in attitudes had taken place. He began to frequent gambling and disorderly places. But he was too clever to lose money. However, it got him into trouble. Although his college work was more than satisfactory he was called before the officials because he had been present at a time when the police raided a place. His pent-up rage burst on the dean and other faculty men who were present. His natural courage served him well and in a torrent of profane and abusive language he told them that nobody could tell him with whom he could or could not associate. He denounced them with all the curses he could lay his tongue to, blindly abusing them for all his misery. There were papers lying on the table relative to his case. He snatched them up and tore them into pieces, swore they couldn't expel him because he was going to leave.

He came home and secured a first-class position very soon, and has held it ever since. But he is going rapidly on the downward path. He has taken to drinking heavily, frequents disorderly resorts constantly and is badly diseased. He is not able to do as his father has done—defy the world's standard of morality and enjoy life in his own way.[1]

The Place of a Sociologist in the Treatment of Delinquency

The great importance for diagnosis of the study of the social environment has been recognized by social workers. A delinquent boy under examination for stealing was found to be physically in perfect health, his intelligence was above the average, and he had no mental peculiarities. He was living in a social environment where he had never known a boy who did not steal. With an understanding of the social situation, his delinquency could be understood. Without such knowledge no intelligent treatment could be planned. A little girl not yet eight years old was brought to an agency in a middle western city. It was her third visit for examination as to the cause of truancy. Each time the report upon the case was "no significant finding." A threefold experience of this sort should have suggested that the seat of trouble was in the social situation. A sociological specialist was needed to make investigation, analysis and recommendation.

Delinquents, who have become misfits on account of weakness of mind or body, are subjects for the attention of the alienist, psychiatrist or physician. More numerous are the normal children who, because of their social environment, find themselves in serious difficulty. Incorrigibility is produced by conditions in the home, school and playground. The study of the child in the situation in which the behavior is conditioned can be made only by one with the knowledge and technique of scientific sociology.

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[1] Adapted and quoted from Burgess, The Study of the Delinquent as a Person in the *American Journal of Sociology*, vol. XXVIII, pp. 657–680, May, 1923; Thomas, "The Unadjusted Girl," pp. 1–40, Little, Brown & Co., 1923.

A trained sociologist should be placed on the staff of clinics dealing with delinquents. His work should be correlated with that of the physician, psychiatrist and psychologist. The knowledge and technique of the sociologist is needed to complete the individual case study method developed by Dr. William Healy. The average trained social worker is not prepared to analyze a social situation and to detect incipient anti-social behavior. Many criminal careers might have been prevented had the social background of their early years been intelligently studied. The success of the Catholic Charities Probation Bureau in New York City has been described by the director as based not only on careful personality studies but also on the scientific evaluation of environmental and sociological factors. The Bureau of Juvenile Research of Chicago has recently added to its staff a sociologist to investigate the social situation from which the individuals studied come. "The concentration of delinquents in certain areas of the city, the geographical localization of certain kinds of delinquencies, the extremely high frequency of instances of stealing by groups of two or more boys (91 per cent of 6,466 unselected instances of stealing involved two or more participants), and the large number of cases in which the influence of older and more experienced offenders appears as an important factor are findings which seem to reflect community influence . . . There is urgent need, therefore, for a more objective method to evaluate community factors in relation to the development of delinquent careers."

The rate of delinquency has been found to be a valuable quantitative device for studying the community background of the delinquent. Comparison between the rate of delinquency and (1) rate of family dependency, (2) percentage of families owning their homes, (3) percentage of foreign born, (4) rate of increase or of decrease in population, and (5) percentage of aliens in the population shows a definite relationship of the variations to the types of areas that have resulted from the radial expansion of Chicago from the central business district. A disproportionately large number of delinquents were found to be living in the areas immediately surrounding the loop—the central business district. The rate of delinquency by square-mile areas declined from 37 in the first mile adjacent to the loop to 1 near the city limits; rate of family dependency declined from 4.7 to 0 in the same radial limits; percentage of families owning homes increased from 4.5 to 70 under the same conditions. These figures suggest a close relationship between community situations and the formation of delinquent patterns of behavior. Changes in the nationalities living in these areas seem to have little effect upon delinquency compared with the general character and conditions in the different areas.

A sociological clinic is maintained by members of the department of sociology of Vanderbilt University at Nashville, Tennessee. It was not founded as a dispensary for the diagnosis and treatment of social ills but as an aid to research. Most of the cases come from the juvenile court. A report is made summarizing the findings and suggesting recommendations for treatment as a result of the study of the data. It is necessary to restrict the intake of cases both as to numbers and kinds. The plan is to study in detail fifty cases in nine months.

The routine medical and psychological examinations are made at the Vanderbilt Hospital. There are no opportunities for psychiatric examinations. A regular procedure is followed in handling cases leading up to a clinical conference in which the case is reviewed and the data subjected to criticism. A summary of the discussion of each conference is made so that a journal of experience is accumulating.

There are two parts to the study of a case. One consists of the objective data such as the medical examination, intelligence tests and mental traits, habits and behavior, the family and neighborhood situations. The other aims at getting subjective data—the child's responses to situations. The child's total world includes not merely the inner family and community life but also his ambitions, hopes, aspirations and vicarious and idealized experiences. Most of his troubles happen in his real world, while he attempts to rebuild his real world in terms of his ideal world. Possibly the behavior which becomes delinquency results from the effort to make over his real world in terms of his ideal world.

The attempt to obtain subjective data is not original in connection with the clinic at Nashville. Healy has made use of the child's own story. Shaw has developed a technique for getting boys to write their own autobiographies. The use of stenographer, dictaphone and other aids has in mind to capture the vocabulary of the individual—to get the data in concrete terms. Burgess has suggested that the key is to be found in the child's conception of his role and of himself and that he gets into trouble when these concepts do not conform to his real status. The clash between the two involves disregard of social regulations and conventions and results in delinquency.

The sociological specialist should be more widely utilized in the training of probation and parole officers. He should be especially charged with the duty of making contacts between institutional wards who have been paroled or discharged and the normal institutions in the community. He should find a place in schools for the training of social workers that they may go out not only with the technique of a job but also with an understanding of its significance, meaning and place in society.[1]

Court Versus Expert Board

The Massachusetts law providing for the mental examination of persons accused of crime is "easily the most far-sighted piece of legislation yet passed dealing with individual delinquents." The original law went into effect in September, 1921. It was as follows: "Whenever a person is indicted by a grand jury for a capital offense, or whenever a person, who is known to have been indicted for any other offense more than once, or to have been previously convicted of a felony, is indicted by a grand jury, or bound over for trial in a superior court," notice shall be given to the Department of Mental Diseases and the Department shall cause such person to be examined "with a view to determine his mental condition and the existence of any mental disease or defect which would affect his criminal responsibility." The department is required to file its report with the clerk of the court in which the trial is to be held, and the report is to be accessible to the court, the district attorney, and to the attorney for the accused and is admissible as evidence of the mental condition of the accused.

Such a law recognizes the importance of a careful study of the individual delinquent particularly in regard to his mental condition and consequent responsibility. It makes a routine procedure of the examination and the examination is made by a neutral, unbiased agency and by experts trained and experienced in mental medicine. The examination is made before trial and before it is decided whether or not to resort to the defense of insanity.

These examinations should result in the accumulation of valuable scientific data upon the mental make-up of the recidivist. More immediate gains are that (1) the mentally unsound are spared the ordeal of a trial; (2) the state and its officials are saved the expenditure of time, effort and money in the prosecution of those who ought not to be tried; and (3) the reports of the experts will give information to public officials as to cases of mental defect, constitutional psychopathic inferiority and related conditions, and result in more humane and sensible disposition of the borderline cases of the semi-responsible.

The law does not include misdemeanors and therefore leaves out those who have had a long career as petty offenders. The reporting of cases depends upon the clerks of the courts who are not compelled to make such reports unless they *know* the previous records of offenders. More complete criminal records are necessary before the law can operate successfully. Some time will elapse before judges coordinate their disposition of cases with the reports of the experts. The effective interrelation of all the agencies dealing with criminals is a fundamental problem in the field of crime.

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[1] Coulter, *Proceedings of the American Prison Association*, pp. 132–141, 1927; Shaw, Correlation of Juvenile Delinquency with Community Organization and Disorganization, *Proceedings of the American Sociological Society*, vol. XXII, pp. 174–179; Reckless, A Sociological Clinic for the Study of Juvenile Delinquency, *Proceedings, American Sociological Society*, vol. XXII, pp. 187–194.

Up to and including Oct. 15, 1926, 367 cases had been reported under the law. Of these 295 were examined; 173 for capital offenses; 6 for second-degree murder or manslaughter; 19 for sex offenses; 52 for larceny; 46 for burglary; 16 for robbery; and 14 for dangerous assault. The 367 reported were indicted for 421 offenses.

The reports of examinations were as follows: 26 cases of insanity; 11 of psychopathic personality; 25 mental deficiency. There were 62 cases or about 21 per cent mentally abnormal and in addition 7 were recommended for hospital observation. Consequently, 226 cases or 76 per cent showed no evidences of mental deviation.[1]

The operation of this notable law in a specific case is described in the following account:

> Not long ago a brilliant young physician in Massachusetts shot and killed the brother-in-law with whom he lived. No motive for the crime could be imagined; when the murderer confessed he declared that God had told him to do it. The stage seemed set for another sensational trial of the Leopold-Loeb type, hinging on the battle between alienists for the prosecution and for the defense, pitted against each other to prove the defendant sane or insane. The four psychiatrists who examined the prisoner under the routine application of this law reported to the District Attorney their opinion that he was suffering from mental disease of an obscure type, not affecting his intellectual faculties, which might not be detected for years from casual outward examination. And on receiving this information the district attorney took a notable course.
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> "Ordinarily," he pointed out, "insanity is a plea used by the defense. The state puts in its case, and the defense then tries to prove that the defendant was insane at the time he committed the act. As we see it, however, it is not the duty of the district attorney to prove an innocent man guilty, nor yet to prove an insane man is sane. Rather it is his duty to lay before the court and jury all the facts of the case and to bring out the truth . . . In view of the psychiatrists' reports I cannot conscientiously argue that this defendant is sane and if the court directs a verdict of insanity, I shall not oppose it."
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> He then put the alienists on the stand. None of them was cross-examined. At the end of their testimony the counsel for the defense asked the Judge to order a verdict of "not guilty by reason of insanity." That verdict was quickly returned,

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[1] Glueck, State Legislation Providing for the Mental Examination of Persons Accused of Crime, in *Mental Hygiene*, vol. VIII, pp. 1–19, January, 1924; Glueck, Psychiatric Examination of Persons Accused of Crime, in *Mental Hygiene*, vol. xi, pp. 287–305 April, 1927.

and the court committed the defendant to the State Hospital for the Criminal Insane for life. The trial had taken less than a day.

The National Committee for Mental Hygiene, commenting at length on this case in a recent Bulletin, points out that this simple and logical course protected public safety more effectively than a verdict in the second degree, since release before natural death is practically impossible, and spared at least $50,000 which would have been spent for a long spectacular trial. Moreover, it avoided the degrading spectacle of making a man's life the stake of a game of wits between legal and medical experts. Most important of all, it obtained treatment for the prisoner "wholly in keeping with modern concepts of medical jurisprudence, which is more concerned with the individual than with his crime . . . We commend this action of Massachusetts and a common-sense prosecutor to other states.[1]

A special report of a committee of the National Crime Commission released for publication in June, 1928, called attention to the Massachusetts law and also to somewhat similar legislation in Colorado. It referred to "the utter absurdity of entrusting the difficult determination of the mental responsibility of an accused person for his acts to twelve laymen, admittedly unable to pass on the question from their own knowledge or training." The immediate occasion for the issue of the report was the publicity given to the recent trial of George Remus in Cincinnati, where "sudden insanity" was the plea under which the defendant escaped the penalty for his crime. Later he obtained release from the insane hospital to which he was committed by having himself declared sane.

The committee pointed out that since the Massachusetts law was passed there has been an average of less than one case a year in which alienists have been employed by the defense in trials. It has largely done away with the practice of mental experts appearing on either side of a capital case for large fees and has saved the state costly trials in a number of cases.

"Obviously," the committee states, "what steps to take depend upon the kind of individual the court is dealing with. The psychiatrist, with his special knowledge of certain types of human behavior, comes in to assist the court in gaining an understanding of the prisoner, of his intellectual condition, his emotional makeup, character and personality traits, educational and social background and other important mental and physical factors bearing upon the case. It is the criminal and not the crime that must be dealt with."

Furthermore, the committee called attention to the changes proposed by the American Psychiatric Association in respect to trial and procedure. They include "(*a*) that the disposition of all misdemeanants and felons be based upon study of the individual offender by properly qualified and impartial experts cooperating with the courts; (*b*) that such experts be appointed by the courts with provision for remuneration from public funds; (*c*) that prisoners be discharged or released upon parole only after complete and competent psychiatric examination with findings favorable for successful rehabilitation; and (*d*) that the incurably inadequate, incompetent, and antisocial offenders be interned permanently, without regard to the particular offense committed." Such changes, far from helping the criminal, would result in greater social protection. Such farces as the Remus trial could not occur under such handling of individual delinquents.

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[1] *The Survey*, vol. LIV, pp. 218–219, May 15, 1925.

The Colorado statute provides for the commitment to a state hospital for mental disease for observation for a period not exceeding one month immediately following a plea of insanity. The judge may appoint a committee of one or more physicians, specialists in mental diseases, to examine the defendant during said period, and he may call and examine these physicians as witnesses at the trial. After the period of observation, the case, at the discretion of the court, may be either set for trial on the insanity issue alone, and the defendant committed to the custody of the state hospital or held for trial, dependant on the verdict of the jury, or be tried on the main issue. This law by no means compares with the Massachusetts statute in the clarity and effectiveness of its provisions. It does little more than to give the sanction of legislation to the exercise of the discretion of the judge in cases where the plea of insanity is raised.[1]

Late in 1927 Governor Smith suggested that the duty of sentencing felons be taken from the hands of judges and given to a board of experts composed of the best available psychiatrists, criminologists and alienists, who would be compensated with salaries as large as any paid by the state. These experts would keep the felon under observation for an indefinite period after his conviction and from their findings would decide what was to be done with him. They would determine whether he went to prison or to an insane hospital; whether the sentence should be long or short. The plan suggests that criminals are to be treated as psychopathic cases rather than as willful offenders.

The proposal is in keeping with progressive thought. It would mean the establishment of a state clearing house for criminals where they would be treated as individuals. Important details of the plan must be worked out, and the Governor proposed that the State Crime Commission should take a year to study the question. An amendment to the state constitution will probably be required if the plan is to be adopted.

What Governor Smith suggested is, in reality, to provide a thoroughly competent study of every person committed to a state prison before a decision is reached as to the disposition to be made of him. Such a study would be expensive, but it also is expensive to handle criminals in the haphazard way in which they are now handled.[1]

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[1] *Report of Special Committee on Medical Aspects of Crime*, Mrs. Richard Derby, Chairman, in relation to Juries and the Insanity Plea, released for publication, June, 1923. The committee is a subcommittee of the National Crime Commission.

CONCLUSIONS

The time when a psychiatrist was described in a debate in one of our state legislatures as "a nut employed to chase another nut" is not so far in the past, but such legislation as that in Massachusetts and Colorado, the work in Illinois and Ohio, as well as in other states, indicates that we are making real progress in the development of the study of the individual delinquent. Psychiatry, psychology and medicine have been accepted rather widely as aids in the administration of justice. The place of sociology has still to be recognized and its contributions incorporated into our judicial system. The department of sociology of the University of Chicago is laying the foundations for a more socialized jurisprudence in the future.

The need for much more attention to the individual delinquent was brought out in an article in *The Probation Bulletin* in regard to the Hickman Case. It pointed out that (1) "he came from a broken home and had a marked antagonism to his father"; (2) "he was in the public schools and showed abnormal behavior trends, yet did not receive the services of a visiting teacher or of a psychiatrist"; (3) "his mother was under the care of an agency devoted to the treatment and supervision of the insane, yet no especial attention was paid to her offspring"; (4) "he came under the observation of the court at an early age for forgery and was handled in a way adequate to his offense, yet no special study was made then of his physical and mental make-up"; (5) "his threats of crime were known to the police, yet no skilled scientific work was done to prevent the final tragedy"; (6) "the newspapers have debased and inflamed public opinion without giving (save in a few instances) any real information about the causes of the crime"; (7) "his defense attorneys proposed the only reasonable course of action, the submission of the mental hygiene aspects of his case to a board of experts appointed by the American Association of Psychiatrists. This was denied by the court, presumably for lack of legislation providing for such sensible procedure."[2]

Crime is always the joint product of an individual and a social factor. Individuals who are feeble minded or psychopathic lead law-abiding lives, while others of the same kind are criminals. Individuals in a certain economic or social situation pursue criminal careers and others in the same situation are orderly members of society. The children who get into court come more frequently from poor or broken homes, but none of the children in some homes of that kind are delinquent, and not all of the children in other homes of the same kind are delinquent, and many delinquent children come from homes that are good.

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[1] *The Independent*, vol. CXIX, p. 618, Dec. 24, 1927; *The Nation*, vol. CXXV, p. 698, Dec. 21, 1927; *The Literary Digest*, Jan. 7, 1928. For a discussion of clearing houses see Sutherland, "Criminology," pp. 607–610.

[2] VAN WATERS, Why Hickman Hangs in *The Survey*, vol. LXI, pp. 20–23, Oct. 1, 1928. The article in *The Probation Bulletin*, June, 1928, quotes from an editorial written by Dr. Miriam Van Waters in the *Mental Hygiene Bulletin* of Los Angeles.

Individual case study is the best method by which knowledge of the mechanisms by which crime is produced can be obtained. We need very detailed and comprehensive records of the development of personalities. Autobiographies and diaries contribute to the understanding of personalities. Case records of the juvenile courts, the prisons and the social welfare agencies help in the accumulation of data. Records, not only of those who are delinquent but of those who are not, should be secured for the light they throw on human nature and differences in behavior. A Chicago bank has sixty men engaged in research in its own field. There should be many times more persons making personality research studies, securing, collecting and making available life histories of various types of individualities. A continuous record of every person in the United States could be obtained by the concerted action of existing institutions.

In addition the standards, codes and values of normal society must be investigated. The influence of the social organization and its reactions upon various types of personalities ought to be understood. Such studies would make it possible to construct a general science of human behavior, of which delinquency would be a branch. Diagnosis of an individual case involves a diagnosis of the community of which the individual forms a part.[1]

Review Questions

1. What is the best contribution to a solution of the problems involved in so-called "crime waves"?
2. What is the fundamental importance of the study of the individual delinquent?
3. How has the profession of clinical or diagnosing criminologist come into existence?
4. Describe the pioneer work of Dr. William Healy.
5. What is the field of the Illinois Division of Criminology? Into what two parts is its work divided?
6. How does the division assist in the administration at Joliet and the other penal institutions?
7. What is its relation to other divisions of the Department of Public Welfare?
8. How is the preventive work of the division carried on?
9. What possibilities are there for the study of behavior problems in high schools?
10. How was the work organized at LaSalle?
11. What is the purpose of the Ohio Bureau of Juvenile Research?
12. From what sources does it receive its cases?
13. Compare the field of the Illinois Division of Criminology with that of the Ohio Bureau.

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[1] SUTHERLAND, "Criminology," pp. 86–88, 111, 140, J. B. Lippincott Company, 1924.

14. What attitude toward crime is indicated by the work of the Ohio and Illinois organizations?

15. Describe the Commonwealth Fund Program.

16. Explain the distinction between the delinquent as an individual and as a person.

17. What is the significance of the distinction for the study of behavior problems?

18. Compare the technique of the study of the individual with that for the study of personality.

19. Discuss the application of the distinction between the individual and the person in the case of the young man.

20. What is the place of the sociologist in the treatment of delinquency?

21. Describe the results of the work of the sociologist at the Bureau of Juvenile Research of Chicago.

22. Explain the operation of the sociological clinic at Vanderbilt University.

23. What notable law has Massachusetts in capital offenses and in cases of persons previously convicted of felonies?

24. How was this law applied in a specific case?

25. What other states have or have proposed similar laws?

Topics for Investigation

1. Study the work of Dr. William Healy. See Healy and Bronner, "Delinquents and Criminals."

2. Study the work of Dr. Herman M. Adler of the Illinois Division of Criminology. See *Reports of the Illinois Division of Criminology.*

3. Study the work of the Ohio Bureau of Juvenile Research. See reports.

4. Describe the Commonwealth Fund Program. See publications.

5. Describe the work of the Bureau of Educational Counsel of the Lasalle-Peru High School. See *Report* for 1923–1926.

6. Study the work of Habit Clinics for Preschool Children. See Dr. D. A. Thom in Children's Bureau publication 135 and Dr. David M. Levy, reprint from the *Illinois Institution Quarterly*, December, 1923.

7. Study the arrangements made in Massachusetts for the care of defective delinquents. See *Reports of the Commissioner of Correction of Massachusetts.*

8. Study the delinquent as a person. See Burgess in the *American Journal of Sociology*, May, 1923. Discuss cases.

9. Use the same analysis for the cases described in Mrs. Wembridge's "Other People's Daughters."

10. Discuss the results of the law in Massachusetts providing for the mental examination of persons accused of crime. See *Mental Hygiene*, January, 1924, and April, 1927.

11. Describe the place of the sociologist in a clinic for delinquents. See *Proceedings of the American Prison Association*, pp. 132–141, 1927.

12. Discuss the relation of juvenile delinquency to community conditions. See *Proceedings of the American Sociological Society*, vol. XXII, pp. 174–179.

Selected References

1. SUTHERLAND: "Criminology," Chaps. IV–VIII.
2. GILLIN: "Criminology and Penology," Chaps. VI–IX, XI–XIII. (Cases)
3. WINES: "Punishment and Reformation," Chap. XII.
4. THOMAS: "The Unadjusted Girl," Chap. I.
5. STUTSMAN: "Curing the Criminal," Chaps. III, XII–XIII.
6. DRUCKER and HEXTER: "Children Astray."

7. "Judge Baker Foundation Case Studies."
8. Healy and Bronner: "Delinquents and Criminals." Chaps. I–II, XX–XXII.
9. Parsons: "Crime and the Criminal," Chaps. VI–VIII.
10. McKernan: "The Crime and Trial of Leopold and Loeb." See also *Journal of Criminal Law and Criminology*, pp. 347–405, November, 1924, and Sellers, "Loeb-Leopold Case."
11. Coulter: The Place of the Sociologist in a Clinic for Delinquents in *Journal of Delinquency*, December, 1927, and *American Prison Association*, pp. 132–141, 1927.
12. Reckless: A Sociological Clinic for the Study of Juvenile Delinquency in *Proceedings of American Sociological Society*, vol. XXII, pp. 187–194.
13. Shaw: Correlation of Juvenile Delinquency with Community Organization and Disorganization, *Proceedings of American Sociological Society*, vol. XXII, pp. 174–179.
14. Wembridge: "Other People's Daughters."
15. Shaw: "Delinquency Areas."

CHAPTER IV

TYPES OF CRIMINALS

The pioneer work of Lombroso and his followers in the scientific study of the criminal led to attempts to classify criminals according to their varying characteristics. The most famous and the most discussed class or type of criminal was Lombroso's "born criminal." Based upon insufficient data, overemphasized by Lombroso himself in order to gain acceptance of his new approach to the criminal and exaggerated or misrepresented by advocates or opponents, the born criminal idea has been discarded. Other classifications attempted by different criminologists came to be regarded as abstract and artificial so that later students of criminology have given up the effort to classify criminals accurately and scientifically as born, habitual, occasional, single offenders, accidental and other similar types.

More recently the development of the individual case study method by social workers, and its use by psychologists and psychiatrists, has resulted in the revival of undertakings to classify criminals in a more scientific manner and based upon more sufficient data. Mental testing and the study of abnormal psychology have brought out many facts about criminals that formerly had not been recognized or understood. Especially in the case of defective delinquents, the need for special treatment and special training has been realized. The first reaction to this discovery was to exaggerate unduly the proportion of such delinquents in the prison population. Later studies have been more conservative as to the percentage of defective delinquents, but have indicated that other types of offenders exist who require special treatment.

THE NEW JERSEY STUDY OF DEFECTIVE DELINQUENTS

These recent tendencies are incidental results in many instances of studies made to improve the administration of penal institutions. One of the first policies developed in New Jersey, after all the penal, correctional, hospital, relief and training institutions had been brought under the general supervision and control of one body—the State Board of Control of Institutions and Agencies—was a comprehensive study of patients committed to state institutions. This study of individual patients on admission was already in operation in hospital types of institutions. The usual type of perfunctory examinations was also conducted in the correctional and penal institutions.

The first activities for improving the classification of persons committed to state institutions were concentrated upon the correctional institutions, and particularly upon the juvenile institutions. An all-round study of each individual received in the correctional institutions within sixty days of his admission was undertaken. This included a complete medical, psychiatric, psychological and educational examination, supplemented by the studies of the social workers. A general summary of the findings and recommendations was compiled and a conference held in which all the specialists participated. As a result of the classification conference, specific recommendations, with a schedule for medical and surgical treatment, educational and vocational training, industrial work, disciplinary adjustment and transfers to special institutions were made.

A psychiatric clinic was active in this work. It gives expert psychiatric and psychological service to all state institutions. The members of the staff are thoroughly trained, skilled specialists. They make complete mental studies, supplementing the general physical examinations made by the local institution physician. The clinic works in close cooperation with the division of classification of the Central Board of Control and with the correctional and hospital institutions.

The classification work promptly brought to light the importance of a definite policy for the handling of the defective delinquent group. It was discovered that the defective delinquent was really descriptive of two major classes of offenders, the occasional and the habitual offender, and these in turn were subdivided into the feeble minded, the epileptic and the insane. From the standpoint of their emotional make-up, these were further subdivided into the stable and the unstable. Dr. Edgar A. Doll, psychologist of the psychiatric clinic, outlined a classification for the placement and training of six types of defective delinquent offenders as follows:

OUTLINE OF CLASSIFICATION AND DISPOSITION

Type of offender	Symptoms	Disposition
Feeble minded, stable occasional	Feeble-mindedness predominant, defective temperament or environment secondary	Training schools for those of trainable age and type, colonies for industrial adults, custodial institutions for helpless, low grade and aged
Feeble minded, unstable occasional	Instability predominant, low mentality secondary, temperament or environment tertiary	State hospitals until cured of instability, then to appropriate feeble-minded institutions as above

Outline of Classification and Disposition (*Continued*)

Type of offender	Symptoms	Disposition
Feeble minded, stable habitual	Delinquency predominant, temperament or environment primary, feeble-mindedness secondary	Correctional institutions under special segregation until reformed, then to feeble-minded institution as above
Feeble minded, unstable habitual	Delinquency and instability predominant, defective temperament and environment primary, instability secondary, feeble-mindedness tertiary	State hospitals until cured of instability, then back to correctional institution for reclassification, then to appropriate feeble-minded institution
Non-feeble minded, unstable occasional	Instability predominant, defective temperament or environment secondary	State hospitals until cured of instability, then back to correctional institution for reclassification or parole.
Non-feeble minded, unstable habitual	Delinquency and instability predominant, defective temperament and environment primary, instability secondary	State hospital until cured of instability, then back to correctional institution for reclassification or parole

Etiological subclassification of types of instability.........	Toxemic Congenitally syphilitic Epileptoid Endocrinopathic Environmental

As a result of three years experience with the policy outlined by Dr. Doll, six general tentative conclusions were indicated.

1. The classification procedure is dependable and practicable. No serious mistakes in diagnosis or classification have appeared. The interests of the receiving institution, and of the individual patients have been protected.

2. The delinquent group when transferred to the charitable institutions are prone to display delinquent tendencies through unruly conduct, sex offences and attempts to run away in nearly half of the cases studied. This occurs in spite of the care with which the classification was made, and in spite of the fact that an effort is made to send the unstable cases to the hospitals for treatment of instability before commitment to the institution for the feeble minded.

3. One disturbing and upsetting condition proved to be the fact that the patients sent from a correctional to a charitable institution are oppressed with the thought that they will not be released or paroled.

4. This latter condition argues for a special institution for the defective delinquent.

5. Experience with the more amenable group shows that there has been a large measure of success with this group after transfer to the correctional institutions, and after a period of intensive training at the receiving institution, these

patients may be promoted to industrial colonies, and in a very few instances, given a tryout on parole in the community.

6. Three years experience justifies a continuance of the policy which has had such satisfactory results with a majority of the individuals concerned. The principal modification indicated is the *need for a special institution for defective delinquents of the persistently delinquent and unruly types.*[1]

A SURVEY OF 1,916 PRISONERS IN THE WESTERN PENITENTIARY OF PENNSYLVANIA

This study is based on 1,916 prisoners of the Western Penitentiary of Pennsylvania, examined from January, 1924, to January, 1926. It covers all the inmates during this period except those who were released before they were reached for examination. The cases constitute an unbiased prison sampling, but it should be remarked that prison population as it accumulates over a term of years is not the same as the yearly addition of new men. With lapse of years there is a residue of "long timers" and "lifers." This group, therefore, is made up of the total accumulated prison population, plus the new men that entered during the two years but minus those released before they could be examined.

Professor W. T. Root of the University of Pittsburgh was in charge of the survey and he was assisted by a number of graduate students. He had the cooperation of the warden and other prison officials and the approval of the Department of Welfare.

The statistical tabulations, graphs and discussions are derived from the following data: social psychological data; the Binet-Simon test (Stanford revisions); the Woodworth psychiatric questionnaire; individual psychiatric examinations; the Illinois general intelligence test (examinations I and II, form 2); the court notes on the cases; the records of the parole department; correspondence with persons acquainted with or related to the offenders; and the reports of the field worker. The individual case work required a total of from eight to twelve hours for each inmate. The Illinois test was given to small groups of about twenty men from time to time, partly to supplement the Binet test and partly to aid in placement in the prison school. Judgment in particular cases was often supplemented by reports of progress in the prison school, the prison doctor's report, the man's work record and his discipline record as shown in the deputy-warden's office. In many cases the general moral tone, type of friend and habits of thought of the prisoner was confirmed by a study of the kind of letters he wrote and the nature of the letters received.

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[1] ELLIS, Experience in Classifying Defective Delinquents and Some Results Effected by Transfer from Correctional Institutions to Hospitals and Institutions for Feeble Minded, reprinted from the *Proceedings of the Forty-Eighth Annual Session of the American Association for the Study of the Feeble Minded*, 1924.

Every source of information was used and every available check introduced to make the data as accurate as possible. In spite of the great care taken, certain items are underestimated or overestimated. Recidivism is probably always underestimated, for only a few psychopathic criminals will exaggerate their offenses. Serious offenses are checked up fairly closely by reports from other institutions. Misdemeanors are very difficult to check. The prisoner's statement about his work record is likely to be more rosy than the facts warrant. The number of unskilled workers is regularly greater than the statistics show, while the number of skilled workers is less. Nevertheless, statistics probably give a more accurate picture as a whole than the impressions of even the most experienced prison officials.

Prison populations are not fair samplings of the criminals at large. No one knows how representative the inmates of penal institutions are of the criminals who are never caught. Again, if we define crime in a more ethical sense, our penitentiary cases become less and less typical. It is, however, of practical value to know the nature of the unsuccessful legal offender, his habits, his intelligence, his education, ability, sanity and the possibility of his moral and vocational reeducation and reform. The selective factors are probably "lack of intelligence, lack of proper legal advice, lack of political pull, lack of a definite trade and education (closely linked with intelligence and combined with unemployment), lack of experience, and finally lack of intelligent and carefully premeditated illegality."

The classifications of crime used in the study are those actually found in legal practice in western Pennsylvania. Much more important than the classes of crime derived from the courts would be a *psychological classification* based on *motive and habit sets.* If it were possible to secure the information, the degree of premeditation would be of the greatest value in determining the possible degree of reform and the nature, the time and the length of parole. From this point of view crime could be classified under five headings: (1) sustained and prolonged premeditation; (2) temporary premeditation; (3) impulse acts; (4) a coincidental cluster of events; (5) habitual dereliction.

Under sustained and prolonged premeditation would come all professional predatory crimes and coldly calculated murder. The act is usually free from any immediate social suggestion or emotional pressure. In the majority of cases where there is prolonged premeditation, the hope of reeducation or reform is slight. The nature of the crime is of less importance than the nature of the motive.

When dealing with delinquency with a short period of premeditation, we find an entirely different situation as to reform. Murders with a short period of premeditation may come within the legal sense of being definitely planned, but the premeditation is so influenced by emotion that the criminal act is not at all an example of the individual's life habits.

Circumstances, the pressure of imitation and the gang influence may lead to predatory crime where the desire for the things stolen is clearly temporary or passing in character. Reform is likely for there are no habits or ideals leading to criminal acts.

Sometimes the offender is of a psychopathic type and may never premeditate, and yet be extremely dangerous to society. Situations of a trying character that would not seriously disturb a normal person bring these individuals into "a state of uncontrollable agitation and anger ending in a complete loss of perspective and social values." As petty and exasperating situations occur continually, the chronically violent, impulsive type is a constant menace to society.

Crimes may be committed without prolonged or temporary premeditation, without abnormality and with fairly normal intelligence and social control. A unique combination of circumstances reduces a normal individual to an uncontrollable emotional state. Any one item would not have provoked the illegal act, but a coincidental cluster of events produced the criminal action. The same combination of circumstances is not likely to be repeated and, consequently, further offenses are not likely after release.

Finally, there is the habitual derelict type with low intelligence as the usual basic cause, although drink, drugs or physical condition and misfortune may act in a similar way. There is lack of social understanding, lack of appreciation of social values and lack of capacity for self-guidance. The habitual derelict is not a professional because that involves a certain amount of premeditation. "Such individuals constitute an economic residue and are a continual social menace, not because they defy social codes, not because they cold-bloodedly plan from motives of greed or revenge, but because they lack completely the social comprehension to behave intelligently."

Official or legal statistics or classifications do not fit the foregoing five types of crime. Since we do not classify in terms of the nature of the motive, it is exceedingly important to remember that "all murderers are not alike, all larcenies do not have a common denominator, and that a murderer, a forger, a highwayman and an assault case may be nearly identical from an ethical and motivation standpoint and consequently from the nature and the possible outcome of any reform measures."

Four murderers may be unlike in all the characteristics related to cause or possible reform. One murderer may have planned his crime coldly and carefully, may have considered all risks, and his objective may have been merely predatory. He is closely related from his motive to the professional burglar, the panderer and the forger. Another murderer is cunning, his motive is to satisfy a sadistic taste and not at all connected with any form of theft. He is closely allied with the sex pervert or the brutal ruffian who finds brutality its own excuse for being. A third murderer may be generous, impulsive, high tempered and easily made jealous and suspicious. He is intense in his love, in his jealousy and in his repentance. No thought of hate or murder may have been in his mind an hour before the crime was committed. The fourth murderer simply got drunk and circumstances did the rest. He was without motive or aim, and is very similar to the usual "ten-dollars-or-ten-days" police court case.

NUMBER OF PRISONERS AND PERCENTAGES OF CRIMES

Crime		Number	Per cent
Robbery Larceny Burglary Embezzlement Forgery	Predatory crimes	1,008	52.6
Rape Sodomy Pandering	Sex crimes	221	11.4
Homicide Felonious assault	Violent crimes	652	34.0
Arson Labor trouble		35	2.0
Total		1,916	100

THE TURNOVER IN PRISON POPULATION[1]

Minimum sentence	Number	Cumulative per cent
1 year or less	65	9.9
1½	102	25.5
2	70	36.2
2½	51	44.0
3	70	54.7
3½	12	56.5
4	42	62.9
4½	5	63.7
5	92	77.8
6	33	82.8
7	23	86.3
8	26	90.3
9	7	91.4
10	25	95.2
Over 10 years	31	100.0

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[1] This table is based upon 654 men admitted during the year from Jan. 1, 1925, to Jan. 1, 1926. If these men were released at the end of their minimum sentence, the results would be as shown in the preceding tabulation.

At the end of ten years there would be only 31 men or 4.8 per cent of the original 654 still in prison. The situation, therefore, indicates a nearly complete turnover in ten years. About a third of the men are released in two years, about a half in three years, about three-fourths in five years and nine-tenths in eight years.

Bearing these facts in mind, it is evident that the period of parole is the most difficult and most important period in the reform of the offender. It is primarily a transition time during which reformation develops or complete criminal habituation occurs.

Prisoners give inability to secure work as the chief cause for failure on parole. Probably there is a good deal of truth in this belief, as 68 per cent of the men are unskilled, 30 per cent skilled (liberally interpreted), while only 2 per cent have had business experience.

How irrational our penal methods of supervision are is suggested by the fact that we employ from 100 to 200 guards to control 1,700 men with all the prison walls and bars, but within ten years 90 per cent of the same persons will be at large in society with a single parole officer to aid in their readjustment.

PRISONERS ARRANGED IN ORDER OF INTELLIGENCE

Crime	Median intelligence quotient	Mental age	
		Years	Months
Embezzlers	103.75	16	7
Robbers	84.3	13	6
Forgers	83.75	13	5
Burglars	81.75	13	1
Larceny	78.3	12	6
Arson	75.0	12	0
Rape	72.8	11	8
Sodomy	72.1	11	6
Homicides	70.9	11	4
Felonious assault	68.3	10	11
All predatory cases	80.3	12	10
All crimes	76.2	12	2
All sex cases	72.8	11	8
All violence cases	70.2	11	3

The classification of intelligence follows the one given in Terman's "Measurement of Intelligence"; dull normals range from 80 to 90, normals from 90 to 110.

The distribution of intelligence according to crime indicates that only predatory crime is associated with the highest grade and even in such cases only embezzlement shows a median slightly above the average intelligence of the general population outside penal institutions. Robbery comes next, but is distinctly lower, the median point falling among dull normals. Forgery and burglary are a little lower, but the difference is small. Robbery seems to attract the young, daring and a little more intelligent group than larceny.

Arson, rape and sodomy fall within the border-line group, the last two are just above the moron group. Homicide comes next in the scale of declining intelligence, while felonious assault has the lowest rank. Both of these groups have a large number of imbecile types. Felonious assault, rape and sodomy cases have the largest percentage of imbeciles and morons of any groups.

In rape, sodomy and arson cases there is likely to be "a feeble-minded basis with a deep-seated, constitutional psychopathic nature." Many larceny cases are "economic residue with a low grade of intelligence plus drink," but they are less apt to be psychopathic except in a mild functional way. Felonious assault and homicide vary greatly as to motive, conditions and psychopathic state. Many of the crimes of violence are found with an exceedingly low intelligence, low emotional breaking point and are produced by very trivial provocations.

"Social adjustment, supervision, institutional care, depending on the individual case, not periods of progressively longer imprisonment with the expectation of reforming, are the only possible methods of treating such cases. The problem is substantially one of low intelligence, stupidity, drink and dope plus psychopathic traits. When we solve these problems, the corollary problem of crime will be relatively easy."

A rough calculation as to the intelligence of the 1916 cases studied in the survey gives the following results:

70 *imbeciles* incapable of much education.
661 *morons* not going much beyond primary grades.
882 *border line and dull normals* not going much beyond the seventh grade.
296 *normals* with some possibilities of a trades high-school education.
70 *superiors and very superiors* capable of unlimited education.

Such an estimate neglects three items which will reduce the number in each group that will attain the standards suggested: "psychopathic conditions, middle-age attitudes (not peculiar to prisoners), and mental habits, willingness, physical conditions, sensory defect." Psychopathic conditions are extremely important factors in the last group.

Since the industrial world demands an increasingly elaborate trade and technical education, which is dependent upon general education, the ultimate educational limitations of the majority of prisoners are apparent. Simple trade training or less is all that can be expected. Probably 50 per cent of the 1916 cases studied are not capable of skilled and independent trade training.

The conclusions drawn from the survey emphasize the fact that "crime is a relative matter: the criminal does not differ from the rest of us in kind but only in degree . . . crime is a matter of individual difference both in its remote causes and immediate motives." The emotional, instinctive causes are never alike for any two individuals. Take for instance all the inmates of a prison who have committed theft. The offense is the same in each case, but the causes may be numerous and varied. Professor Root suggests "fourteen types, each committing theft," but differing . . .

> as to motive and also as to mental, physical and emotional make-up, and consequently there is individual difference in the nature and in the possibility of reform. The *neurotic* may be highly intelligent and the disturbing factor may be functional and correctible. The *moron* and *imbecile* are hopeless except in so far as social and economic responsibility may be simplified and guarded. Well defined *mental disease* may be *chronic*, as *paresis*, or at times *transient* and *curable* as in certain *manias*. In some, treatment may remove the difficulty (neurosis), in others, if the disease is advanced, it is of no avail (paresis), or prognosis may have to be deferred as is often the case in dementia praecox. In some, education will aid, for example when the essential factor is adolescent surroundings, bad social and leisure habits, criminalistic imagery, or the conditions imposed on itinerant labor. In some, education is secondary or useless as in the case of the *low-grade feeble-minded*, the *constitutional psychopath*, *chronic recidivist* and *chronic alcoholic*. In some cases it is society, itself, that needs education, and which is essentially responsible. This is true of some out of work cases, combinations of child labor and crime, and the sordid settings often provided adolescence. In some cases society, itself, is essentially criminal in its political, economic and social relationships.

Differential treatment is suggested as follows:

1. All incoming prisoners should be placed under observation for a period of several weeks to determine the exact nature of the case. The insane should be turned over to the psychiatrist and the hospitals for the criminally insane.

2. There should be a rough segregation of the feeble minded. Many of these cases are capable of successful readjustment. Others need permanent care in a protective sense both for society and for the individual. Border-line intelligence cases with low emotional breaking point or marked sex abnormality fall within this group. Many of these also need segregation from the rest of the prisoners. "Society has certainly bungled when a fairly wholesome boy of sixteen goes to the penitentiary for the quite understandable crime of 'taking an auto' and comes out foul in mind and a sex degenerate."

3. All prisoners should be carefully tested as to the amount of education each is capable of receiving. The problem is not unlike that of a public school system with groups ranging from primary to technical trades and professions, with a much larger number of individuals incapable of the higher grades. No person should be paroled "until he has

attained an education and trade training somewhat comparable with his mentality and ability."

4. Some few feeble minded or neurotics usually prove dangerous or disturbers of the peace even within the prison walls. Experience shows that the segregation of only 2 to 5 per cent of the prison population, composed of such cases, is effective in doing away with from 50 to 90 per cent of the discipline cases.

5. The habitual and professional criminals should have a searching investigation in regard to the causes of their delinquency. Chronic crime and incurable disease are not entirely unlike and should both be subjected to permanent care. "Certain potential emotional feeble-minded types and certain insane types should be excluded from society with the first offense which is often minor, but fatalistically significant as to future action. This is also true of certain sex cases.[1]"

The conclusions of the Pennsylvania survey indicate how important it is in our penal treatment to study carefully the prison population. Different types of criminals need to be handled in different ways. Instead of only two kinds of institutions for adult offenders, we should have a number of specialized institutions devoted to care of the different classes of prisoners. Defective, psychopathic and other abnormal types are beginning to be recognized and plans made for their treatment in a scientific manner. A few states like Illinois, New Jersey and Massachusetts are laying the foundations for the new criminology, which will be based upon a measurably scientific determination of different types of criminals.

The Massachusetts Study of the County Jail Population

Although other states are spending considerable amounts of money for the psychiatric examination of prisoners in state institutions, Massachusetts is the only state making a thorough study of the county jail population. Since 90 per cent of all commitments are to the county jails, and 50 per cent of the prisoners received there are known to have served previous sentences, a study of this group is of great importance if the penal problem is to be intelligently handled.

In 1924 an act was passed by the Massachusetts legislature "requiring the psychiatric examination of certain prisoners in jails and houses of correction and providing for the assembling of relevant official information as to such prisoners." The law provided that "keepers and masters of jails and houses of correction shall cause all convicted prisoners serving a sentence of more than thirty days, except prisoners sentenced for non-payment of fine, and all convicted prisoners serving sentence who have been previously committed upon sentence to any penal institution, to be given a thorough psychiatric examination by a psychiatrist" appointed in the manner prescribed by existing legislation.

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[1] Root, "A Psychological and Educational Survey of 1,916 Prisoners in the Western Penitentiary of Pennsylvania," pp. 12–13, 27, 33–37, 40–44, 52–54, 64, 239–245, published by the Board of Trustees of the Western Penitentiary, 1927.

Specifications governing the manner and time of the examinations were to be determined by the departments of public health and mental diseases. These departments were also to prescribe the medical and psychiatric records to be kept, require such laboratory or other diagnostic aids to be used as in their judgment were expedient, and were to forward to the commissioner of correction statements of the results of all examinations together with recommendations. The psychiatrists were also required to furnish from time to time such information as the commissioner might request. For the purpose of obtaining further information the commissioner was given power to cause inquiry to be made of court physicians and psychiatrists, probation officers and district attorneys, who had made examinations or investigations of such prisoners prior to conviction or who had prosecuted them, and such physicians, psychiatrists, and probation officers were required to furnish to the commissioner, when requested, all pertinent information in their possession. The commissioner was also given power to cause such further inquiry to be made relative to the offenses committed by the prisoners and their past history and environment as he thought necessary. He was required to have records made of such examinations and investigations and was ordered to transmit copies of these records to the commission on probation. Failure on the part of any official to comply with these requirements involved a fine of not more than fifty dollars.

Legislation in Massachusetts already provided for physical and psychiatric examinations for inmates of the state penal institutions, and the new law merely extended these examinations to county prisoners. Massachusetts also has a notable law requiring the psychiatric examination of certain persons accused of crime before trial by representatives of the department of mental diseases. This law has been described in the preceding chapter. Massachusetts has, therefore, provided for the careful examination of all prisoners committed to penal institutions, as well as of certain persons accused of the more serious crimes, and also of repeated offenders.

The examination of prisoners is in charge of the Division for Examination of Prisoners of the Department of Mental Diseases. The personnel consists of one full-time and nine part-time psychiatrists, one psychologist, eleven social workers and ten stenographers. The main office is in Boston, and in addition there are four district offices located at various strategic points in the state. Up to June, 1929, something over 6,100 records had been completed. An analysis of 5,000 of these cases has been begun and this analysis will give valuable light on the make-up of the county jail population. These case studies are probably the best studies of this kind that have been made anywhere in the country, if not in the world. In March, 1926, the department of correction established an Advisory Commission on Crime Prevention with the purpose of the proper utilization of these case histories. Valuable results are expected from its researches.

After nearly three years' trial of personality studies of the population of county penal institutions, the department of correction reported certain results. These are summarized as "a better understanding of the situation, a clearer plan for treatment of the old problems, a readier response from other agencies cooperating in helping these same men and women, and many hope-giving reports about the individuals who have been helped."

Inmates are divided according to the psychiatrist's findings into groups—"some for care or training in institutions existent or suggested, some for supervision or friendly help in the community, some who seem to have been sufficiently corrected by the sentence so that no further trouble need be expected, and some who must be classed as hopeless because we do not yet know how to deal with them."

"A recent classification showed the greatest proportion to be chiefly a problem of alcoholism"—42 per cent. Another large group, the psychopathic delinquents, makes up nearly 9 per cent. The mentally diseased or epileptic comprise nearly 4 per cent, the defective delinquents nearly 5 per cent, the feeble minded, not essentially delinquent, 3 per cent. In addition there were 14 per cent classed as self-correcting after sentence, 4 per cent called hopeless and 28 per cent who need supervision and guidance in the community.

Massachusetts has special state institutions for dealing with defective delinquents, male and female. No other specialized institutions have been developed, but plainly the careful case studies of large numbers of offenders will lead to the differential treatment of other groups, particularly the psychopathic delinquents, the alcoholic and drug addicts. The same process of development that has given us state prisons, reformatories, juvenile training schools, hospitals for the insane and feeble minded, schools for the deaf and dumb, will break up our large adult penal and correctional institutions into units fitted to deal with scientifically selected groups. Special treatment for such classes of inmates will replace the old mass treatment which has been so costly and so inefficient in producing reform and rehabilitation.[1]

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[1] Letter and materials from Dr. Winfred Overholser, director of the division for examination of prisoners, Massachusetts Department of Mental Diseases, dated June 4, 1929; *Annual Report of the Commissioner of Correction of Massachusetts*, pp. 3, 4, 1926; *Massachusetts Department of Correction Quarterly*, Jynuary, 1928; Overholser, Psychiatry and the Courts in Massachusetts, in the *Journal of Criminal Law and Criminology*, vol. XIX, pp. 75–83, May, 1928, Overholser, Psychiatric Facilities in Courts, National Conference of Social Work, pp. 143–150, 1928.

STANDARDIZATION OF CLASSIFICATION

Until 1925 there was no concerted effort to procure a universal nomenclature and description of the various types of offenders who are committed to correctional institutions. In November, 1925, the medical section of the American Prison Association proposed the appointment of a committee of five "to consider the standardization of classification for correctional institution inmates." The committee appointed as a result of this action presented a preliminary report in October, 1926, with the request that final adoption be deferred for a period of one or two years, during which interval certain details could be perfected. The report was accepted tentatively and additional members appointed to aid in the work. In August, 1927, the enlarged committee, consisting of fifteen members, asked to be continued for another year, at which time it would present a method of classification together with a handbook descriptive of the use of the classification, and a statistical card which would show not only the personality diagnosis but also indicate other necessary information as to the type of offender, the kinds of crimes committed, intelligence rating, education, physical condition and the usual data with reference to parents, nativity, residence and occupation. The final report was made in 1928.

Five main groups of offenders were noted—normal, feeble minded, neuropathic, psychotic, and potentially psychotic. Under *neuropathic* the chief subdivisions are psychopathic personality, epileptic, alcoholic, drug addict and the psychoneurotic. *Psychotic* and *potentially psychotic* include a variety of factors which can be diagnosed only by specialists. *Normal* includes all those who after careful study fail to disclose the outstanding characteristics of the other four groups. The *feeble minded*, or *defective delinquent* "is an offender, who, because of mental subnormality at times coupled with mental instability, is not amenable to the ordinary custody and training of the average correctional institution and whose presence therein is detrimental to both the type of individual herein described, and to the proper development of the methods of rehabilitation of other groups of delinquents. Further, the defective delinquent because of his limited intelligence and suggestibility requires prolonged and careful training, preferably in a special institution to develop habits of industry and obedience."[1]

Recent studies of psychiatrists, psychologists and social workers have given scientific basis for the classification of different types of criminals. Other groups of actual or potential offenders have developed in the course of our national history and have taken their places in popular opinion as more prone to commit crime. Probably the foreign born and the Negro are more widely believed to contribute larger quotas to the criminal population than any other groups in the United States. These same groups are also more likely to be the victims of crime. Sutherland points out that Negroes, adults, males and Italians suffer the largest losses from homicide. These groups are social categories, and their contribution to and share in crime are to be explained largely in the terms of social conditions and of the social situations in which they are placed.

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[1] *Proceedings of the American Prison Association*, pp. 229–234, 1926, pp. 188, 189, 1927; "Classification Handbook and Statistical Guide," published by the American Prison Association.

The Immigrant Offender

In 1923 native white prisoners formed only 53.4 per cent of the total number of prisoners, and only 54.4 per cent of those committed, while 70.9 per cent of the population were native white. Foreign-born white prisoners formed 13.8 per cent of the prison population and 18.7 per cent of the commitments, as compared with 19.4 per cent foreign-born white for the adult population.

As an explanation of the large number of foreign-born white prisoners, it should be remembered that the percentage of urban population is considerably larger for the foreign born than for the native born. More lawbreaking usually occurs under urban conditions than in rural communities. Many acts, harmless in the country are prohibited in the cities. Consequently, the excessive number of foreign born is accounted for to a great extent by the tendency of immigrants to settle in the cities.

Both among prisoners and among commitments, the percentage of native whites was somewhat higher among those in prisons and reformatories than among those in jails and workhouses. The foreign-born whites, on the other hand, formed a decidedly lower percentage of the prison and reformatory group than of the jail and workhouse prisoners. These percentages were 55.3 and 62.0 for native whites among prisoners and commitments to prisons and reformatories, and 12.3 and 12.0 for foreign-born whites in the same two groups of institutions. These results suggest that the native born commit more serious crimes than the foreign born—a conclusion contrary to the popular opinion that foreigners commit more serious crimes, even if they do not engage in crime more frequently.

In 1923, as compared with 1910, there was a slight increase in the percentage which native whites formed of the adult population, and there was also an increase in the percentage which the native white prisoners formed of the total. The increases for the prisoners were relatively greater than the increase for the adult population. The increase for commitments to prisons and reformatories was particularly large.

Comparing foreign-born white prisoners in 1923 and 1910 with the adult population, there was a decrease for both the prisoners and the population in the percentage. In commitments to prisons and reformatories there was no decided difference between the decreases for prisoners and for the population.

The ratio per hundred thousand of population of commitments of native whites was 609.2 in 1910 and 404.1 in 1923; the ratios for foreign-born whites for the same years were 794.9 and 517.5, respectively. The percentage of decrease was 33.7 for the native whites and 34.9 for the foreign born.

Comparisons of commitments for specific offenses show that native white prisoners formed an exceptionally high percentage of the total number convicted of forgery, violating traffic laws, adultery and robbery. The foreign-born whites contributed unusually high proportions of those convicted of non-support or neglect of family, drunkenness, violating city ordinances, violating liquor laws and disorderly conduct.

Those convicted of larceny, burglary, fraud, forgery and robbery formed decidedly higher percentages of native white than of the foreign-born prisoners. At the same time, foreign-born prisoners exceeded the natives as to the percentages convicted of the chief minor offenses, drunkenness and disorderly conduct. Again we note that foreigners do not commit the more serious offenses, as they are commonly supposed to do. Of course, these differences are largely influenced by geographic distribution and social and economic status, and do not offer a satisfactory measure of the tendencies of the groups to commit particular offenses.[1]

Statistics may be misinterpreted unless great care is taken in making comparisons. In comparing natives and foreign born, groups are considered that contain different proportions of women and children. Among foreign immigrants there is an abnormally large proportion of young adult males, whose crime rate is always high; among the native born the large proportion of women and children, whose crime rate is always low, reduces the total amount of crime. A fair comparison can be made only by taking the number of commitments for each age and sex group separately—for instance, the number of commitments of males between twenty-four and thirty-four years of native parentage as compared with males of the same ages of foreign birth.

Again, commitments are an imperfect measure of criminality. Many offenders are not caught and some persons convicted are innocent. Many guilty persons are punished in other ways than by commitment to prison or jail. If foreigners are more likely to be caught, and when caught, more likely to be convicted than the native, or more likely to be imprisoned than fined, and also less likely to be able to avoid imprisonment by the payment of a fine than the native, the rate of criminality based on the statistics of commitments will be greater for the foreigner without regard to the actual criminality of the two groups.

[1] *Prisoners*, 1923, pp. 57–69, Bureau of the Census, Washington, D. C., 1926.

From statistics we can get only a rough measurement of foreign criminality. Really to understand the actual situation it is necessary to study concrete cases. In some cases there does not seem to be any connection between native characteristics or the circumstances and the fact of commitment for crime. In other instances such a connection can be traced. There are cases in which an immigrant who is innocent may be committed to prison as a result of ignorance of the language and customs. On the other hand, the different conditions of life in the new country, the breaking down of old habits and control seem to result in criminal conduct on the part of persons who were entirely law abiding in their accustomed surroundings.

Foreigners may commit crimes of violence because of a number of reasons. They are fair game to street boys, who will tease and torment them until they are driven to acts of violence in retaliation. Troubles in domestic relations due to conflict between old world and new world social customs may lead to serious crimes. Irregular sex relations, incidental to the fact that the male immigrant frequently leaves his family in the old home, while he becomes established and saves money for their transportation to the new world, are another source of danger. Such instances suggest reasons why the foreign born may become criminal more frequently than the native American without any greater inclination to delinquency.[1]

In the Survey of Prisoners in the Western Penitentiary of Pennsylvania, already referred to, a special study was made of Italian convicts. The Italian group of 144 individuals was the largest of the foreign groups in the institution. The investigation led to the discovery of the following facts:

1. The Italians from Southern Italy in Pennsylvania commit more crimes than those from Northern Italy. The reasons are the retention by the former of the traditional habits handed down from feudal days, and the unfavorable economic conditions of Southern Italy.
2. The Italians in Western Pennsylvania commit more crimes of violence than any other race group except the Negroes.
3. The principal factors of crime in order of importance for the Italians are (*a*) low emotional breaking point, (*b*) carrying concealed weapons, (*c*) drinking and card playing, (*d*) lack of employment, and (*e*) associates (gang influence).
4. The commission of crimes of violence is not a racial trait of the Italians. It is not found in the American born Italians in any notably greater degree than native whites.
5. Recidivism is relatively less common among Italians in the Western Penitentiary than among American born Italians and native whites.
6. A large proportion of American born Italians (71.9 per cent) were born in cities of Pennsylvania as compared with 29.03 per cent of the native whites.

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[1] CLAGHORN, "The Immigrant's Day in Court, Chap. III," Harper & Brothers, 1923.

7. The Italians in Western Pennsylvania commit relatively more of every crime per incidence of population, with the exception of larceny, forgery, and embezzlement, than the native whites.

8. The average intellectual rating of the Italians in the Western Penitentiary falls in the low borderline group.

To counterbalance these rather unfavorable conclusions, a few things in favor of the Italians can be strongly emphasized. The most important of these is willingness to work, to learn, to improve and to change. Italian disciplinary cases are rare and they are among the most eager, willing and persistent students in the penitentiary school. The most outstanding point in favor of the Italian group in the Western Penitentiary is that the number of habitual criminal cases is far smaller relatively than it is for the native whites, including the American born Italians. Professional criminals are almost unknown in the Italian group. Their crimes are seldom planned beforehand, but are "usually committed on the spur of the moment, under emotional stress." Taking it all in all, the *Italian as a criminal is far less dangerous than the native white.*[1]

The Negro Criminal

In 1923 Negroes formed 31.3 per cent of the prison population and 23.3 per cent of commitments, as compared with 9.3 per cent of Negroes in the adult population. The disparity between the prisoners and the population in percentage was greater for females than for males. While the percentage of male Negroes was about three times as large for prisoners as in the population, and over twice as large for commitments, the percentage among the female prisoners was more than four times as large, and five times as large for commitments. The percentage of Negroes did not differ materially as between prisons and reformatories and the jails and workhouses.

Negroes formed a smaller percentage of the adult population in 1920 than in 1910. They also made up smaller percentages of the prisoners and of the commitments to prisons and reformatories. The percentage committed to jails and workhouses was higher in 1923 than in 1910 for both males and females. In 1923 and 1910 Negroes contributed a much larger number of commitments in proportion to population than any other class. The foreign born ranked second and the native whites were the lowest.

The ratio per hundred thousand of population of commitments among Negroes was 1,822.7 in 1910 and 1,305.9 in 1923—a decrease of 28.4 per cent. The figures for native whites were 609.2 in 1910 and 404.1 in 1923;

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[1] Root, "A Psychological and Educational Survey of 1916 Prisoners in the Western Penitentiary of Pennsylvania," pp. 218–238, published by the Board of Trustees of the Western Penitentiary, 1927.

for foreign-born whites the figures for the same years were 794.9 and 517.5, respectively.

Negroes constituted exceptionally high percentages of the total convictions for gambling, carrying concealed weapons, assault, fornication, prostitution and homicide. A higher percentage of Negroes than of native or foreign-born white prisoners was convicted in 1923 of disorderly conduct, vagrancy, larceny, assault, burglary, carrying concealed weapons, fornication, prostitution, homicide, gambling, malicious mischief, trespassing and keeping houses of ill fame.[1]

Statistics of Negro criminality are probably more unreliable than those of immigrants. Negroes are generally more likely to be arrested than are white persons. The social status and color affect the probability of arrest both in respect to the offender and the victim. As in the case of the foreign born, residence and the social conditions and social situations are determining factors. The attitude toward the Negro is different in the North and in the South. Increase of numbers and movements from one section to another disturb existing conditions and lead to conflicts, such as occurred in Chicago in 1919.

It is commonly believed in the United States that the Negro is more criminal than the white. Whether this belief is founded on fact or not, it is a significant factor in the creation of racial attitudes toward the Negro.

Practically all investigators of Negro criminality, Negro or white, have admitted the existence of an apparently higher crime rate for the Negro than for the white. In the Western Penitentiary of Pennsylvania, a recent study indicated that the Negro prisoners numbered 575 instead of 42, which would have been their quota if crime were just as frequent among the Negroes as among the whites. In other words, the frequency of imprisonment was for the Negro thirteen times that of the white. Similar comparisons have been made in various parts of the country, giving a basis for the conclusion that "the Negro seems to be more frequently in contact with agencies of criminal justice than the white." It must be remembered, however, that the data indicates the apparent and not the real criminality of the Negro.

The first obstacle in the way of arriving at any sound conclusion as to the real criminality of the Negro is the lack of usable statistics. The records of police departments, courts, and penal institutions have not been arranged so as to correlate criminality with race in any conclusive manner. Furthermore, these statistics are far from reliable. Where it has been possible to check the figures as to Negro criminality, they have been found to be full of errors. In a great many cases there is no information to be obtained from official records, or it is not in usable shape for statistical comparisons.

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[1] *Prisoners*, 1923, pp. 57–69, Bureau of the Census, Washington, D. C., 1926.

It is claimed by many students of Negro criminality that the police are ready to arrest Negroes upon the slightest charges. The Chicago Commission on Race Relations said that the testimony was "practically unanimous that Negroes are much more liable to arrest than whites, since police officers share in the general public opinion that Negroes 'are more criminal than white,' and also feel that there is little risk of trouble in arresting Negroes, while greater care must be exercised in arresting whites." Professor E. B. Reuter reached the same conclusion in his recent book, "The American Race Problem."

The Negro is not only arrested more frequently but also he is more likely to be convicted when brought into court. There are various causes for this condition: the law may be more rigidly enforced against the Negro than against the white; the court may deal more severely with the Negro; and the Negro may be unable to take advantage of the protection of the law, either because he cannot afford good legal advice or because he lacks "pull." He is handicapped and his handicap is registered in a high rate of conviction.

Again, the Negro is not only convicted more frequently but also he seems to receive the heavier sentences. A study of 1,521 chain-gang prisoners in North Carolina showed that "seven per cent of the white prisoners and eleven per cent of the Negroes were serving sentences shorter than three months. On the other hand, six per cent of the white prisoners and eleven per cent of the Negroes were serving sentences of three years or more. The larger percentage of short sentences imposed upon the Negroes as compared with whites probably means that there is a larger percentage of Negroes who are unable to pay a small fine or costs in cases of petty offenses. The fact that the chances of receiving a sentence to the roads of three years or longer, are two to one against the Negro as compared with the white man, suggests that justice is not blind to the color of a man's skin." It is quite possible that the discrimination against the Negro may be due to differences in the nature of the offenses committed by the different groups.

According to Professor Reuter there were 130 offenders sentenced to death in the United States in 1910. "Of this number 49 or 37.7 per cent were Negroes. The percentage of Negroes who received prison sentences of over one year was about three times as high as the percentage of the white commitments. In 1900 approximately one-third of all Negroes committed to prison received sentences of one year or more; of the white commitments for the same year less than 10 per cent received sentences of one year or more."

In 1910 "of the total number of persons sentenced for one year or more 40.9 per cent were Negroes, while of those sentenced to terms of less than one year only 13.4 per cent were Negroes. This difference is in part sectional rather than racial. In the South where the bulk of the

Negroes live the proportion of long prison sentences for both races is greater than in the North. This, however, does not explain the entire difference for within the same section and state the percentage of Negroes among those committed for long terms is greater than among those sentenced for short terms, and the percentage of Negroes increases as the length of the term of imprisonment increases. The same tendency toward greater severity in the treatment of the Negro offender appears in cases punished by fine or by fine and imprisonment."[1]

Professor Thorsten Sellin reaches the conclusion that there is no satisfactory evidence that "the Negro's *real* criminality is lower or as low as the white's. The American Negro lacks education and earthly goods. He has had very little political experience and industrial training. His contact with city life has been unfortunate, for it has forced him into the most dilapidated and vicious areas of our great cities. Like a shadow over his whole existence lies the oppressive race prejudice of his white neighbor, restricting his activities and thwarting his ambitions."[2]

Professor Reuter sums up the situation in the following manner:

> Crime is certainly as much a matter of delinquent communities as of individual perversity. Whether of white or Negro, of juvenile or adult, it is a form of community disease. The neglect to provide adequate and proper facilities for the care and training of the young is of course the community dereliction that explains most crime, and the degree of that dereliction is reflected in comparative crime rates. The same forces are at work among the Negroes. But in many cases at least the causes are more active among them than among other groups, especially the native elements of our population. Their education and training is less; their poverty is greater and consequently their housing and living conditions are more deplorable; there is less provision made for caring for colored defectives; they are in a more or less unstable condition because they have been but lately given freedom, and many of them, especially in the cities and in the North, are in a new and strange environment; they are discriminated against socially and industrially; they are often abused by the police; and sometimes, at least, not fairly treated by the courts.[3]

Professor Reuter's summary not only very clearly diagnoses the basis for Negro criminality but also strikes a fundamental reason for the very existence of crime in modern society—its social roots as well as its individual origin.

The North Carolina Board of Charities and Public Welfare published recently a bulletin on capital punishment in that state, in which is given a brief history of the use of the death penalty, statistics as to the number of capital convictions since the introduction of electrocution in 1909, the disposition of cases according to the educational status, age, marital condition and occupation of the offenders, a statement of the character and amount of lynching in the entire country and in the state and a series of case histories of persons sentenced to death.

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[1] Reuter, "The American Race Problem," pp. 351–353, Thomas Y. Crowell Company, 1927.

[2] Sellin, The Negro Criminal in *The Annals*, vol. CXXX, pp. 52–64, November, 1928.

[3] Reuter, "The American Race Problem," p. 363, Thomas Y. Crowell Company, 1927.

From 1909 to Jan. 21, 1928, 200 persons—199 men and 1 woman—were committed to the state prison for capital crimes. Of these 149 were Negroes and 51 whites; the percentages were 74.5 and 25.5, respectively; 94 (47 per cent) met death by electrocution. Of those executed 81 (86 per cent) were Negroes and 13 (14 per cent) were whites; 71 executions were for first degree murder, 21 for rape and 2 for first degree burglary. Of the executions for murder 59 (83 per cent) were of Negroes and 12 (17 per cent) were of whites. For rape the figures were 20 (95.2 per cent) of Negroes and only 1 was white. Both electrocutions for burglary were of Negroes. Of the total number of convictions for capital crimes during the period, the percentages represented by the 94 executions were: Negroes, 40.5 per cent; whites 6.5 per cent; both races, 47 per cent. The Negro executions represent 54. 4 per cent of the Negro convictions, and the white executions represent 25.5 per cent of the white convictions.

The educational status of the 149 Negroes and the 51 whites sentenced to death was as follows: 120 Negroes and 22 whites were totally illiterate. Of the entire group 71 per cent were illiterate, of whom 60 per cent were Negroes, and 11 per cent were whites. The illiterate Negroes composed 80.5 per cent of the Negroes convicted, and the illiterate whites 43 per cent of those convicted; 126 Negroes had never attended school, representing 84 per cent of the Negroes convicted and 63 per cent of the total convictions. The number of whites who had never attended school was not ascertained; 28 negroes and 30 whites were able to read and write. Of the total number convicted, 29 per cent could read and write, of whom 14 per cent were Negroes and 15 per cent were whites. The Negroes who could read and write composed 18 per cent of the Negroes convicted, and the whites who could read and write composed 58.8 per cent of the whites convicted. No Negroes and only one white had completed high school. One Negro and five whites had completed the sixth grade.

The average age of the 200 prisoners sentenced to death was 30.38 years. For the whites the average age was 35.98 years and for the Negroes 28.41 years; 18 Negroes and 2 whites were in their teens—10 per cent of the total number.

The most striking fact brought out in the case histories was the prevalence of mental deficiency among the prisoners convicted of capital crimes, a considerable proportion of whom were executed. There were also several cases of insanity among them, and probably of the 26 individuals studied hardly one was entirely normal. One prisoner declared by an alienist to be a victim of dementia precox was executed.

What is happening in North Carolina is that "the death penalty in a large majority of cases is inflicted upon the subnormal and psychopathic who, through their innate deficiency or abnormality, are unable to cope with their environment, and many of whom are predisposed from birth to the commission of crime."

Judging by this group, North Carolina is "sentencing to death the poor and the ignorant, the mentally defective, the insane and the psychopathic, and not only sentencing them, but executing a considerable number, about half of those sentenced." The so-called "example" value of capital punishment in North Carolina is reduced "to what is provided by the execution of the mentally retarded and defective. It says to the normal persons of the community that they will not suffer the ultimate penalty, while to the defective and retarded members of the community, it is reasonable to suppose that the force of example is not particularly vital." The types of criminals that we kill are suggested by this study which is described by Raymond Moley in *The Survey* as "the most significant statement ever made on capital punishment.[1]"

Review Questions

1. Why were the attempts of Lombroso and his followers to classify criminals given up by later criminologists?
2. What developments in recent years have led to the revival of attempts to classify criminals?
3. Describe the New Jersey study of defective delinquents.
4. What was discovered as a result of the classification work?
5. What were Doll's six types of defective delinquents?
6. Describe the conditions under which the survey in the Western Penitentiary of Pennsylvania was made.
7. What would be the advantages of a psychological classification?
8. Under what five headings could crime be classified?
9. Compare such a classification with the legal classification.
10. Describe four types of murderers from a motivation standpoint.
11. Why is the period of parole the most difficult and important period in the reform of the offender?
12. What did the distribution of intelligence according to crime indicate?
13. What were five conclusions of the Pennsylvania survey?
14. Describe the Massachusetts study of the county jail population.
15. What results have been obtained from this study?
16. What has been done in the standardization of the types of offenders committed to correctional institutions?
17. Discuss the relative criminality of the foreign born and natives.
18. What were the results of the study of Italians in Pennsylvania?

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[1] Capital Punishment in North Carolina, *Special Bulletin* 10, issued by the State Board of Charities and Public Welfare, Raleigh, N. C., 1929; MOLEY, The Convicts We Kill in *The Survey*, vol. LXII, p. 610, Sept. 15, 1929.

19. Compare the criminality of Negroes with that of native and foreign-born whites.

20. What influences tend to produce Negro criminality?

Topics for Investigation

1. Discuss the problems involved in the classification of criminals. See Parmelee, "Criminology," Chap. XIII; Sutherland, "Criminology," pp. 24, 25; and *Journal of Criminal Law and Criminology*, pp. 105–109, May, 1921.

2. What conclusions does Ellwood make in regard to the classifications of criminals? See Ellwood in the *Journal of Criminal Law and Criminology*, pp. 536–548, November, 1910.

3. Describe the professional criminal. See Tannenbaum in *The Century*, pp. 577–588, September, 1925, and Moley in *Current History*, pp. 999–1006, September, 1929.

4. What services can the criminologist perform for the courts? See Adler in the *Journal of Criminal Law and Criminology*, pp. 419–425, November, 1920.

5. What were the results of an analysis of the population of the reformatory for women at Framingham? See Sanborn in the *Journal of Criminol Law and Criminology*, pp. 127–150, May, 1925.

6. Discuss Murchison's conclusions as to criminal intelligence and compare them with Sutherland's conclusions. See Murchison, "Criminal Intelligence," and Sutherland, "Criminology" pp. 106–110.

7. What are Sutherland's conclusions as to the criminality of immigrants? See "Criminology," pp. 97–102.

8. What are Sutherland's conclusions as to the criminality of the Negro? See "Criminology," pp. 102–106.

9. What conclusions can be drawn from the forty-four case histories described by Miss Spaulding in An Experimental Study of Psychopathic Delinquent Women?

10. Study the results of the psychiatric examination of persons accused of crime in Massachusetts. See *Mental Hygiene*, April, 1927, and January, 1924.

11. Discuss the arrangements for the examination of inmates of county jails and houses of correction in Massachusetts. See articles by Dr. Winfred Overholser in the *Journal of Criminal Law and Criminology*, in *Social Forces*, in the *Proceedings of the National Conference of Social Work* and in *The Annals*.

12. Study the conclusions in regard to the relationship between intelligence and crime as presented in the *Journal of Criminal Law and Criminology*, pp. 592–635, February, 1929.

13. Study the comparative length of sentences of Negro and white criminals. See Reuter, "The American Race Problem," Chap. XIV.

14. What types of criminals do we kill? See *The Survey*, p. 610. Sept. 15, 1929.

15. Describe the series of twenty-six case histories of persons sentenced to death in North Carolina. See *Capital Punishment* in North Carolina, a bulletin published by the State Board of Charities and Public Welfare in 1929.

Selected References

1. Root: "A Psychological and Educational Survey of 1916 Prisoners in the Western Penitentiary of Pennsylvania."
2. Overholser: Psychiatric Facilities in Courts, National Conference of Social Work, pp. 143–150, 1928.
3. Overholser: Psychiatry and the Courts, *Journal of Criminal Law and Criminology*, May, 1928.

4. *Prisoners*, 1923, census statistics.
5. Claghorn: "The Immigrant's Day in Court," Chap. III.
6. Reuter: "The American Race Problem," Chaps. XIV, XV.
7. Lawes: "Life and Death in Sing Sing," Chap. III.
8. "Negro Population in the U. S., 1790–1915," Sec. I, Chap. XVII, pp. 436–447, Table 9, p. 441.
9. Murchison: "Criminal Intelligence," Part IV, pp. 201–274.
10. Spaulding: "An Experimental Study of Psychopathic Delinquent Women."
11. Erickson: A Study of the Relationship between Intelligence and Crime, *Journal of Criminal Law and Criminology*, pp. 592–631, February, 1929.
12. *Capital Punishment in North Carolina*, special bulletin published by the State Board of Charities and Public Welfare in 1929.

CHAPTER V

CRIME AND SOCIAL CONTROL—THE POLICE

In every social group conflict arises between the interests of the individual and the welfare of the group. Antisocial impulses and desires exist which, if gratified, would injure other persons and would prevent social organization. Social groups, like individuals, are engaged in a struggle for existence. Antisocial instincts and feelings and intellectual activities which are antisocially directed tend either to be eliminated or restrained.

Many forms of social control have developed in human society. Rewards, praise, flattery, persuasion, advertising, slogans, propaganda, gossip, satire, laughter, calling names, commands, threats and punishment are among the means of social control considered in a recent study of the subject. "In familiar language, social control means getting others to do, believe, think, feel as we wish them to, using the term 'we' to stand for any authority who can have his way with others."[1]

There was no highly organized mechanism of social control in the earlier stages of social evolution. Frequently it was manifested through individuals who were taking personal vengeance for injuries done to themselves or to their relatives. These methods survive in the present day in the use of so-called "popular justice," represented by lynching and the activities of the Ku Klux Klan.

More complex machinery developed with the evolution of the state and government. Government operates through law, which is based largely upon custom, public opinion and current morality. All forms of social control come to be expressed to a considerable extent through law and its enforcement. The most drastic part of the law is the criminal or penal law, and the acts prohibited by this part of the law are crimes.

The most obvious feature of crime is that it is created by the law and is penalized by the law. Crimes are generally the more serious of the antisocial acts and are sometimes described as the major antisocial acts. Parmelee defines a crime as "an act forbidden and punished by the law, which is almost always immoral according to the prevailing ethical standard, which is usually harmful to society, which it is ordinarily feasible to repress by penal measures, and whose repression is necessary or is supposed to be necessary to the preservation of the existing social order."[2]

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[1] LUMLEY, "Means of Social Control," p. 13, The Century Company, 1925.

[2] PARMELEE, "Criminology," p. 32, The Macmillan Company, 1918.

In the course of social evolution there has taken place a selection and survival of the more humane methods of control. Law enforcement is now characterized by the desire to secure deterrence from and the prevention of antisocial acts.

THE POLICE SYSTEM

There are three parts to the machine of criminal justice. They are the police, the courts and the institutions and agencies that deal with convicted offenders. Public opinion seems inclined to blame the prisons, reformatories, probation and parole agencies. Newspapers describe the "coddling" of criminals, the "palace prisons," release of prisoners through parole laws and the "soft treatment" of offenders under probation. The police and the courts should bear their full responsibility for our crime record.

The importance of the police does not seem to be understood. Their strategic position with reference to the causation and prevention of crime and the treatment of criminals is not realized. The preservation of order and the protection of individuals is regarded as accomplished by the arrest of people who offend against the laws. The constable, the sheriff and the marshal have functioned for long periods and for centuries their duties have not changed to any considerable extent. The organized city police are of recent origin. The old watch system was abandoned in New York City in 1844. A force of 800 men in the beginning has increased to 11,000 at the present time, and the annual cost is about $17,500,000. Organized police systems were established by Chicago, New Orleans, Cincinnati, Boston and Baltimore from 1851 to 1857.

Different political units have police officers. The federal government has prohibition agents, secret-service men and revenue officers; some states have regular state police and all have specialized officers, such as game wardens or factory inspectors, and counties and towns have sheriffs, marshals and constables. The uniformed and plain-clothes police force with its detective department in the larger cities is a development from earlier days to meet the more complex problems of modern industrial society.

RURAL POLICE

The policing of our small towns and rural areas, except in a few states that have developed state police, depends upon an organization which is merely a survival of the systems which England had at different times in its earlier history. The sheriff has lost much of the power that he possessed in Anglo-Saxon days when he was a royal official, appointed by the king, to maintain order in the local communities. The constables date from the Norman period and have lost importance as the office of justice of the peace, to which they are attached, has declined in power. A system adapted to English conditions during the later Middle Ages can hardly be expected to function efficiently in modern twentieth century America.

Today our sheriffs are elected locally, are not under any state supervision and are usually poor men paid an inadequate salary and dependent on fees. "In most of the counties of Minnesota," according to the State Crime Commission, "the public machinery for the apprehension of wrongdoers has remained practically unchanged for the past fifty years. A new sheriff enters upon his duties often without training for or experience in his work, and is left largely to train himself." Few sheriffs create an organization of deputies that bears any resemblance to a modern police force. Political considerations rarely allow for any attention to the fitness of a candidate for sheriff. The constitutions of about one-third of the states prevent a sheriff from succeeding himself. Rotation in office remains an insuperable obstacle to efficient administration.

Meanwhile, good roads and automobiles have opened up the country to city criminals; population density has increased; and rural areas are becoming urbanized. While the old machinery for catching criminals has deteriorated, changed conditions have augmented the need for police protection in the rural areas.

The absence of effective rural police has led to the creation of state forces such as that of Pennsylvania. There are now eleven states, including Pennsylvania, that have state constabulary forces. The real reason for the creation of the Pennsylvania police was the disorders that occurred in connection with strikes and labor disturbances. The opposition of labor organizations and local hostility to centralized control are the chief obstacles to the wider extension of state police machinery. Possibly a method of state subsidies might be used to hasten the development of county police forces that maintain prescribed standards.

One of the recommendations of the Minnesota Crime Commission that was enacted into law in 1927 provides for the establishment of a Bureau of Criminal Identification and Information with broader powers than are usually associated with such a bureau. The bureau is "to coordinate the work of peace officers, to furnish them state assistance, and to work constantly for greater efficiency in apprehending wrongdoers without wasteful expense." The commission recommended that the bureau should employ a "reasonable number of trained investigators to supply expert help to sheriff's offices and police departments, and to follow trails of serious crimes where peace officers cannot leave their local jurisdiction. This does not contemplate, and is to avoid, any form of state constabulary or state police."

Furthermore, the bureau was "to arrange police schools for training peace officers in their powers, duties and modern methods of detection and apprehension." It was "to provide a system of uniform blanks and records and to fully index all criminal data received." The broadcasting to peace officers of such information as to wrongdoers as was wanted, property stolen and recovered, and other intelligence useful in controlling crime was also suggested. The bureau was to make "sure that officials concerned with crime and criminals keep proper records as to the apprehension, prosecution, punishment, probation, pardon and parole," and to tabulate and publish its data.[1]

In 1921 the General Assembly of Iowa authorized the attorney-general to establish a Bureau of Investigations and Identification composed of the state special agents and all other peace officers. Under this law all sheriffs and chiefs of police are required to furnish criminal identification records. The bureau makes the work of local peace officers more effective, affords a means of cooperation with officers of other states and of the federal government, and provides a clearing house for the detection of automobile thieves, the recovery of stolen property and the accumulation of information relative to criminal activities. It is hoped the establishment of the bureau will make unnecessary the organization of a state police force.

According to the reports of the attorney-general the value of the work of the bureau has been remarkable and its future is assured. In 1926 there were on file approximately 50,000 finger-print cards and about 18,000 Bertillon photographs. Not only has the bureau been of benefit in law enforcement but it has also established a spirit of cooperation among all peace and local officers.[2]

THE IOWA VIGILANCE COMMITTEE PLAN

After the close of the World War bank robberies increased conspicuously in Iowa. During the war people had purchased large amounts of Liberty bonds which were kept in safety deposit boxes in the banks. It was not long before criminals discovered that there was a large concentration of customers' bonds in bank vaults and safes and the burglarization of the small country banks began. The unorganized police protection in the smaller towns made the work easier. The bank equipment in many of the rural towns was not of the best. As a result farmers, business men, clerks, and laboring men, who owned one or more bonds, were the victims for nearly two years of unprecedented bank robberies directed nearly entirely at the customers of the banks. The robbers were specialized and highly organized. The high-powered automobile made it possible to rob banks in two towns widely separated during the same night and, in both cases, make an escape without difficulty. "These robbers first send their 'spotter' to the small town a few days before the crime is committed. He may pretend to be lame, sell shoestrings or pencils, fix safes, letter windows, beg or 'what not'—anything to allay suspicion and to permit him to enter the bank, to view the vault doors and arrangement of the bank inside and out. This is drawn out on paper and given to the leader of the gang of three or four, and as high as seven men, who a few days later commit the robbery."

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[1] *Report of Subcommittee to the National Crime Commission* on The Relation of the Police and the Courts to the Crime Problem, pp. 12–16, 1928; *Minnesota Crime Commission Report*, pp. 20–21, 1927; HALLAM, The Essentials—Minnesota's Experiment in the *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 340–342, November, 1927.

[2] *Iowa Law Bulletin*, vol. VII, pp. 32–35; *The Iowa Journal of History and Politics*, vol. XIX, p. 525, October, 1921; *Report of the Attorney-general*, pp. 20–21, 1926.

In November, 1919, a conference was held at the headquarters of the Iowa Bankers Association in Des Moines to consider special plans for dealing with the bank robbers who were operating in Iowa. Throughout the following winter the number of robberies continued, seemingly with ever increasing frequency. One of the ideas with regard to augmenting the regular law enforcing agencies was the revival of the Vigilance Committee of the pioneer days and applying the plan to the apprehension of the bank robbers.

In June, 1920, another conference was held at the governor's office. At that meeting a plan was submitted to the governor and accepted, which resulted in the establishment of the Vigilance Committee system. Governor W. L. Harding was intensely interested in perfecting the best kind of an organization in cooperation with the State Bankers Association.

It was decided that the auxiliary organization to supplement the regular law enforcing officials should be built around the county sheriff's office and that the men should be his special deputy sheriffs. A uniform constitution and by-laws were prepared under which the bankers could organize themselves by counties.

By October, 1927, fifty-nine counties had good organizations, twenty-nine counties had partial or fair organizations and only eleven counties were without Vigilance Committees. In May, 1925, the plan was developed by the appointment of county chiefs under the joint control of the county sheriff and county bankers associations to supervise the work of the vigilance committees of the locality. By October, 1927, sixty-seven counties had county chiefs.

The results of the work of the Vigilantes is shown statistically by the fact that in 1926 to 1927 bank robbers obtained only $10,000 as compared with nearly $230,000 in 1921, the worst year for bank robberies. In 1926 to 1927 the number of bank robberies was ten compared with fifty-six five years before.

Kansas was the first state to adopt the Iowa Vigilance Committee plan in 1925. Seven other states—Wisconsin, California, Oklahoma, Illinois, Indiana, Minnesota and Michigan—have followed, making in all, including Iowa, nine states. The Protective Committee of the American Bankers Association has endorsed the plan.

The plan has been worked out and administered in close cooperation with the Bureau of Investigation of the attorney-general's office and its accomplishments have been warmly approved by that official in his reports. As a special phase of law enforcement in the rural districts of the Middle West, it is interesting and suggestive.[1]

City Police

The inefficiency of our city police can not be explained by reference to an ancient and outworn form of organization. The old "watch" system was discarded about the middle of the ninteenth century and police forces established, modeled largely upon the famous Metropolitan Police of London.

In 1921 the regular army Alpha Intelligence Tests were given to the police of Cleveland. Out of the entire force in all branches only 3 per cent were in grade A, and only 13 per cent in B, which means that of 979 men, only 16 per cent had more than average intelligence. Of the police captains 7 per cent were found in class A, and 35 per cent in B—not half were "superior group" men. Captains in the draft army in the World War had 53 per cent in class A as compared with the 7 per cent of the police captains. In fact army corporals had 16 per cent in class A and 9 per cent of the privates were superior men mentally.

A comparison of patrolmen with privates gave the following results:

Police	Per cent	Privates	Per cent
A	3	A	9
B	9	B	14
C+	29	C+	21

Over 25 per cent of the patrolmen were found to be of quite inferior intelligence. Only 33 per cent had average intelligence; that is, 58 per cent were in a class the best of whom were not mentally capable of finishing a high-school course and the worst were in the moron class.

The results of the tests given the detectives were the most surprising of all the returns. Out of sixty-three men, not one was found in grade A, and only 4 per cent in grade B; 23 per cent were in C+, which means that about one-fourth had more than average intelligence. In addition 20 per cent were of low average intelligence and 3 per cent were inferior, or of the moron class. In short, nearly 25 per cent were markedly inferior mentally, and the best quarter of the group were only of high average intelligence.

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[1] *The Iowa Vigilance Committee Plan*, a pamphlet published by the Iowa Bankers Association; *Report of the Attorney-general*, pp. 22–23, 1926.

Raymond B. Fosdick, who has studied police systems in Europe and the United States, found the Cleveland police force "free from corruption but meager in executive material and, like police in other cities, working in a rut. They plod along, content with the methods of the eighties, largely without specialization, with supervision that depends solely on memory, and with a business routine of a kind that would quickly put a commercial house into bankruptcy. While the industrial and financial life of the city was growing as the city grew, the police department merely swelled."

It is fair to assume that the police of Cleveland are not greatly inferior or different from the police forces of other cities, and we are consequently justified in regarding the results as indicative of police ability in general. How can such men be expected or trained to apprehend criminals?[1]

No one who knows anything about city administration will deny that police forces mirror the character and tone of public life in our cities. The problem, therefore, is to raise the general level of all public work or to concentrate attention on the police and "take them out of politics" as we have tried to do, with only partial success, with the educational system. If our election machinery can be simplified so that there will be less need of political workers, this second of the two alternatives may be somewhat hastened. The extension of a real merit system to our city police must rest upon the desire and the will to have a more efficient police force. Do we really want better city police? Apparently we do not realize the impossibility of reconciling political appointments to office with efficiency in the performance of the work of the office.

Certain business principles are applicable to police organization. The cities should have control of their police. There should be a single head, not a board or commission. Furthermore, it should be recognized that the leadership of a city police force is a task requiring training and experience, and that a good man should be continued in office regardless of politicial changes in the city administration. Fosdick points out that in Europe the office of police commissioner is a position of prominence and dignity that attracts the best talent the university or government service can produce. In the United States police commissioners represent all occupations and professions and many of them are manifestly unfit for their jobs. The average term of the police commissioner in London is about fifteen years, while in New York City it is one year and seven months.

A few cities, like Boston, Milwaukee and Berkeley, California, have retained their chiefs of police in spite of changes in administration and even in party control. August Vollmer, the famous scientific police chief of Berkeley, and one time head of the Los Angeles police department, has achieved a national reputation. His force is sometimes described as "highbrow" since there has been cooperation between the University of California, located in Berkeley, and the local police department. A few students have actually served as policemen.[1]

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[1] *Report of Subcommittee to the National Crime Commission* on The Relation of the Police and the Courts to the Crime Problem, pp. 16–18, 1928; Love, Justice in the Stocks in *The Survey*, vol. XLVII, p. 137, Oct. 29, 1921.

"Mopping Up" Los Angeles

Chief August T. Vollmer went to Los Angeles without any knowledge of the conditions in that city. His first act was to organize a bureau of statistics which compiled data showing that arrests in the city had increased from 45,000 annually in 1916 to 87,000 in 1922, and nearly 100,000 for 1923; that 85,000 burglaries were committed in 1922, as against 3,800 in 1916; that 42,000 traffic accidents occurred, as against 12,000 six years previous; that 5,000 cars were being stolen annually and 1,000 robberies being committed yearly. To fight this wave of lawlessness and patrol a city of more than 800,000 population, he discovered that he had a small regiment of 1,600 policemen.

Confronted with these appalling figures, Vollmer next mapped out the "crime areas." He procured a large number of maps and he put men to work sticking pins into the maps at the exact location where crimes were committed. Red-headed pins represented burglaries, blue pins theft, yellow pins automobile thefts, etc. Soon certain areas of the city were covered with the varicolored pins, which showed at a glance where gangs were operating.

While his men were thus locating the crime-infested areas on the map, Vollmer made his first direct attack on the criminals. He took 350 men off the force, put them in plain clothes, placed a secret agent at their head and sent them out after the automobile thieves first, with the idea of concentrating on one kind of crook at a time. "I'm not going to wait for the outlaw to commit a crime," Vollmer explained. "I am going to take the offensive and strike first."

Working in pairs, the plain-clothes men loafed around garages, watched the main arteries of traffic leading out of the city, frequented pool halls, saloons, cheap rooming houses, dives, gambling dens and hangouts where they spotted hard-looking fellows, with no visible means of support. Each officer had in his possession lists of stolen cars and if one was driven into a garage, he arrested the driver. Stolen vehicles leaving the city were picked up. Crooks were followed from their dives and nabbed in the act of escaping with machines.

When the "crime-crushers" reported finding a nest of thieves, Vollmer threw the entire 350 men around the block as a cordon and combed the place clean, arresting scores. During the first week of operation, the crime-crushers reduced the number of automobile thefts from twenty-five per day to six a day, gangs were broken up, garages that bought cars were closed, fences dealing in stolen automobiles were prosecuted and the morale of the police force itself became better.

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[1] *Journal of Criminal Law and Criminology*, vol. VII, pp. 877–898, March, 1917; vol. IX, pp. 319–322, November, 1918; *Chicago Tribune*, Nov. 11, 1924, notes the death of John T. Janssen, who was chief of police of Milwaukee for thirty-three years.

After breaking up the automobile thieves Vollmer went after the burglars and apartment-house thieves. The attack again was handled methodically. First, a study of the pin pointed area infested by burglars was made. Houses were "planted" with loot, windows left open and doors unlocked to entice the criminal in. The crime-crushers visited criminal haunts, hobnobbed with burglars, sometimes joined gangs and listened to the outlaws' plans.

Whenever a strong gang was discovered, Vollmer went after them with his entire 350 men. He took no chances of any escaping from the net.

The fact that two-thirds of the 87,000 criminals arrested in 1922 were ex-convicts helped the police greatly in identification of disturbing elements.

Vollmer also introduced a signal system by means of which he could mobilize all the police of the city or of a particular section in a few minutes' notice. A big searchlight playing on the sky signalled the men on their beats to call headquarters on the telephone to receive instructions. Thus the entire force was put in immediate touch with commanding officers. If these signals failed, Vollmer had an emergency arrangement with the power bureau by which the street lights could be used to flash a message to patrolmen. If a burglary is committed in one district, every man in that area can be notified at once to surround the section and prevent the marauder's escape or in the case of riot large numbers of men can be mobilized at fixed points without delay.

The School for Police at Berkeley is the nearest approach to the European police schools that we have in this country. For fourteen years Chief Vollmer has been training a few officers and executives in anthropometry, finger-printing, criminology, psychiatry, anthropology, toxicology, microanalysis, parasitology, criminal law, physics, chemistry, biology, physiology, anatomy, police organization and administration, police photography, handwriting identification, modus operandi and other subjects. The course requires three years and is more academic but less practical than the German training. High police officers from all over the United States have taken the course or an abbreviation thereof.[1]

THE PREVENTIVE POLICEMAN

The introduction of more business-like methods alone will not make the police completely effective. Police morale must be developed so that "political pull" and brute strength will not be the only requirements for appointment. Social welfare rather than the maintenance of law and order by the mechanical "pounding of the beat" must become the objective. Social work agencies and private individuals are now doing some of the work that a trained police force selected on a merit basis ought to do.

Commissioner Arthur Woods of New York City showed during his administration, 1914 to 1918, what "the preventive policeman" can do. He attacked the breeding places of crime, and, in addition to this negative work, he appointed a welfare officer for each residence district, whose duty it was to watch boys who seemed to be going wrong and to try to help them through their difficulties. Released convicts were assisted in

[1] Reprinted from *Boston Evening Transcript*, Aug. 11, 1925.

securing employment. Woods believed that it was one of the best ways of preventing crime. It tended to form a bond of friendship between the criminal and the police in place of the suspicion and antagonism generated by the usual attitude toward the ex-convicts. A junior police force was organized composed of boys who worked under the general direction of the department. Again a friendly relation was established where ordinarily there is conflict and hostility. Emergency relief in time of distress and unemployment was also provided. Such assistance was not intended to duplicate the work of social service agencies but merely to meet urgent needs more promptly. If the police developed generally these aspects, their work could be coordinated with that of the social work organizations.

How far we are from any constructive view of the police system is shown by the fact that this very exceptional commissioner lost his position as soon as the city administration changed. So long as the police remain the football of politics, they cannot become a really aggressive instrument against crime.[1]

POLICEWOMEN

The police have lacked the stimulus that comes from stability of tenure and promotion by merit; they have not had the support of a sympathetic public; they have not possessed the facilities to deal successfully with organized crime, and they have not had a well-paid, skilled personnel. They have followed their own methods, anxious to escape the public notice and with little contact with the civic groups interested in social welfare.

Recently there has been a reaction against this situation and the policewoman's movement is one of the manifestations. Educated women of high caliber trained in social case work are placed in police departments. Usually they enter through civil service and the examinations are more stringent than those provided for men. The United States Civil Service Commission has established a minimum standard of a high-school education and at least two years' practical experience in social case work, or its equivalent in technical training and business experience. These standards have been endorsed by the International Association of Chiefs of Police and the Association of Policewomen and they are gradually being adopted generally throughout the country. Insistence upon the recognition of these standards is regarded as a means of improving the personnel of the department and of giving new emphasis to the preventive functions of the police.

Although matrons have been dealing with women prisoners for half a century, the police power was not delegated to women until 1905, when a group of volunteers was appointed to serve at the Lewis and Clark Exposition at Portland, Oregon. This resulted in the permanent establishment of a separate division for women, and the movement has grown until today there are policewomen in more than 200 cities in the United States. Considerable impetus was given during the World War.

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[1] WOODS, "Crime Prevention," Princeton University Press, 1918.

Where there is more than one policewoman, the tendency is to organize a separate unit or bureau to which the cases of women and children are referred. A woman with police rank is placed at the head and she is usually directly responsible to the chief. In Washington she is a lieutenant, in Cleveland a captain and in Detroit a deputy commissioner.

The size of the staff varies from one-hundred in New York, forty in Detroit, twenty-three in Washington to two or three policewomen in the smaller cities. In rural communities and towns the policewoman covers a multiplicity of welfare needs. Often she is matron, welfare worker, school attendance officer and sometimes performs other duties. Recently, women have been appointed deputy sheriffs to centralize the work in large rural areas and to control roadhouses outside of city limits.

The volume of cases is astonishing and illustrates very clearly the opportunity for preventive work by the police. The policewoman takes advantage of the chance and provides a trained personnel to deal with the problems. During one year in Toledo four policewomen handled 1,842 cases which represented 85 varieties of human troubles. Similar statistics are found in other cities—1,206 complaints investigated in Minneapolis, 3,642 in Detroit, 802 in Tacoma and 1,425 in Washington.

Besides the work with cases the policewoman deals with the conditions that create delinquency. The supervision and control of public amusement is coordinated with the information obtained through case investigation. Applications for licenses, issuing of licenses, outlining rules of management, visiting amusement places at regular intervals, following up difficult cases, and revoking licenses for the violation of rules are some of the problems with which policewomen struggle. Their service has been extended to truants and children "parked" by their shopping mothers. Young people who roam the streets or attend amusements late at night have led to the revival of a curfew law and its enforcement is attended to by the policewomen. In Portland, Oregon, a penalty for the parents who are negligent is included and the policewomen have been successful in educating the public in its observance. A smaller proportion of the policewomen patrol the parks because of the inadequacy of the staff. The extension of protective service to all the danger spots that menace youth must come in the future.

Furthermore, the policewoman is bridging the chasm between the police and the public by describing her work and the conditions she finds to local and national groups. Such publicity is most desirable both to aid the extension of the policewoman's service and to improve the social welfare side of the police department's functions. The policewoman, is, in reality, a trained social worker and is an example of what would make our police systems much more efficient if the same standards were applied to the male members of the staff as well. The eradication of politics and the establishment of the merit system in police departments is essential if we are going to "let administration catch up with legislation." No field is so rich in possibilities for the prevention of crime and the protection of the underprivileged.[1]

Police Records and Statistics

It has long been the subject of comment that crime records in the United States are not only incomplete but also have little or no comparative value as between jurisdictions. There has been no accepted classification of offenses and no reliable index of the volume or incidence of criminal acts. There are no means for determining how extensive crime is, nor how effective are the current remedies. A similar situation existed in public health work before the establishment of registration areas resulted in more uniform and complete records.

In the absence of data "crime waves" have been manufactured to the discredit of police departments and the confusion of the public concerning effective measures for reducing the amount of crime. During recent years the need of substantial additions to the man-power of police forces has been recognized by those in close touch with what has been going on. Often, however, the lack of reliable and comparable records of the extent and incidence of crime has made it impossible to demonstrate the need for additional personnel. The same has been true of other proposals for the improvement of the administration of criminal justice.

In 1927 the International Association of Chiefs of Police appointed a committee on uniform crime records. Adequate financial support was first secured and an advisory committee of experts was formed to insure the cooperation of agencies such as the Department of Justice and the Census Bureau. Later, a director of the research staff on a full-time basis was appointed. The program involves a study of the methods employed in collecting, compiling and distributing (1) facts relating to offenses known to the police, such as criminal complaints, and (2) facts relating to persons taken into custody.

The committee proposes to do two things. It will prepare suggested forms and procedure for recording criminal complaints. It will not be necessary for all police departments to change their procedure. Some now have satisfactory records and only a moderate amount of rearrangement will be required. The experience of these departments will be helpful to the committee in its work.

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[1] Pigeon, Policewomen in the United States in the *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 372–377, November, 1927; Owings, Women Police," Frederick Hitchcock, New York, 1925; Hamilton, "The Policewoman," Frederick A. Stokes Company, 1924.

Another problem with which the committee will have to deal concerns the crime classification to be used in compiling complaints. An agreement upon such a classification may best be founded upon the statutory definitions contained in state laws. With this end in view a preliminary study has been made covering twenty-nine states and the District of Columbia. For each of the states, there is a schedule which shows the definitions given by the statutes to the following offenses:

1. Felonious homicides.
   a. Murder.
   b. Manslaughter.
2. Rape.
3. Robbery.
4. Burglary.

These offenses do not comprise all major crimes. Assault, larceny and others will be added later after more extended study. A complete schedule for all the forty-eight states will also be prepared for further examination and criticism.

The work of the committee was greatly simplified by the fact that the census has recently adopted a revised classification of offenses in connection with its "Instructions for Compiling Criminal Statistics." That classification is as follows:

1. Homicide.
2. Rape.
3. Robbery
4. Assault.
5. Burglary.
6. Forgery.
7. Larceny.
8. Carrying weapons.
9. Sex offenses except rape.
10. Non-support or neglect of family.
11. Violating drug laws.
12. Violating liquor laws.
13. Driving while intoxicated.
14. Drunkenness.
15. Disorderly conduct.
16. Vagrancy.
17. Violating traffic laws.
18. Violating ordinances.
19. Other.

This classification is already in operation among penal institutions and it can easily be subdivided so as to adapt it to police needs. The committee does not intend to request police departments to adopt it to the exclusion of all others, but to use it as a uniform basis for *reporting complaints and arrests to a central agency.* With the aid of the schedules, any police department will be able to compile an annual return to a central agency without difficulty.

Much of what has already been said about criminal complaints also applies to the record of arrests. The committee believes that from a statistical standpoint these can be given greater general value if police departments secure the same kind of information concerning every offender taken into custody. If arrest records are so maintained that the statistics compiled from them can be directly compared with the census bureau's enumeration of national and racial groups or of occupations, the net result will be far in advance of what we now have. The way will be open for the establishment of a registration area for crimes and criminals such as is now maintained for certain vital statistics. It is possible that an accurate knowledge of the number and distribution of major crimes throughout the United States will furnish a basis for attacking crime at the source.

Police Reports

An absolute essential for the development of an efficient police force is the making of reports. No modern business would dream of carrying on without a complete record of its operations; and yet few police forces in this country keep records that will bear comparison with those of the average business house. The head of every police force should have laid before him daily a summary of crime conditions in the city, and at the end of the year he should make a complete report of arrests and complaints. Annual police reports as usually made give "information as to the number of sick horses, bushels of oats for the horses, pairs of puttees bought, days of illness, number of guns," but there is a lack of facts that enable one to judge of the efficiency of the force. How can the men be assigned to the different districts of a city if a constant watch is not kept on the criminality in each district? "The dearth of adequate statistical information bearing on the activities of the police is certainly one explanation of the prevalence of crime in American cities."

The Committee on Uniform Crime Records published, in December, 1928, a guide for preparing annual police reports, which is described as a by-product of its main work. It was issued in the expectation that it would be of aid to police departments in preparing their annual reports. The guide suggests the kind of material which may be advantageously included in such reports. It is based upon knowledge of the records now maintained by police departments and has been framed so that the preparation of tabular matter will not be unduly burdensome to police authorities. The guide is divided into two parts; the first is devoted to subjects regarded as essential for any police report; the second includes additional subjects, some of them of great value but not usually presented in police reports and, consequently, not indicated in a minimum requirement. The committee believes that the publication and general distribution of such a report will contribute materially to the improvement of police service.

Essential facts for the annual report should make clear the strength and distribution of the police force, giving ranks and grades with salary scale, and the health and fitness of the personnel, according to the report of the police surgeon; number and disposition of offenses known to the police; apprehensions and convictions for major and miscellaneous offenses, according to nativity, color and citizenship, and by age and sex; auto thefts and recoveries by number and percentage, and value of property reported lost or stolen and recovered by the police. Miscellaneous services and plant and equipment complete the essential material.

Additional facts for the annual police report are suggested to round out the picture of police services. Many departments, particularly the smaller ones, will not find it desirable to show this information. Two types which rarely appear in reports deal with the month and hour in which certain crimes are committed. Their value in arranging vacation periods, in distributing patrols as well as their general interest to the public is obvious. Rates and percentages of crimes committed and casos cleared by arrest serve to correct the raw figures of number and disposition of offenses known to the police. The rapid growth of some of our cities has carried the total of certain crimes to very high levels, although the crime rate in relation to population may have remained almost stationary or actually may have declined. Apprehensions for violations of traffic and motor vehicle laws further refine the information recorded in the general table for this type of offense. Vehicular accidents and fatalities might properly receive attention. The National Safety Council has issued a manual upon "Public Accident Reporting," and is prepared to advise cities upon any phase of the subject. The more important accomplishments of criminal identification should find a place in the reports of the police department.[1]

Detection and Identification

Detection of crime involves two kinds of investigation: (1) inquiries at the scene of the crime and in actual pursuit of an offender, (2) methods of sorting, classifying and comparing results. Under 2 are included record files, systems of identification, registers and indexes. As only about twenty-five per cent of the arrests are made at the time of the commission of the offense, the problem of detection and identification is an important part of the work of the police and a separate division is organized. Besides the detective work of the police, many private agencies are engaged in the field.

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[1] Rutledge, Uniform Crime Records in the *Journal of Criminal Law and Criminology*, vol. XIX, pp. 378–382, November, 1928; *Report of Subcommittee* to the National Crime Commission on Criminal Statistics and Identification of Criminals, Dec. 5, 1927; pamphlets issued by the Committee on Uniform Crime Records, *Tentative Program*, March, 1928, *A Uniform Classification of Major Offenses*, June, 1928, and *A Guide for Preparing Annual Police Reports*, December, 1928.

The bulk of crime, especially against property, is committed by those who have previously been in the hands of the police. The chief problem of a detective bureau, therefore, is furnished by the professional or habitual criminal. To enable the police to meet this situation intelligently, criminal record files have become an important part of the equipment of every detective bureau in Europe. Berlin and Vienna have the most complete files. These files consist of a number of card indexes, showing the records and sentences of all criminals at any time in the hands of the police, classified and cross-indexed to other registers where papers, documents and personal statistics relating to each crime are filed. The German genius for arrangement and detail is nowhere shown to better advantage than in the criminal files at Berlin.

Such records classified by name do not furnish a satisfactory instrument for the use of the police. The simple invention of an alias will make the entire system of no value. Descriptions and photographs are by no means sufficient. Some system of identification is necessary which will prevent a person guilty of crime from losing or destroying his identity.

During the last forty years two scientific systems of criminal identification have been developed in Europe. One of these is anthropometry, the science of bodily measurements, and the other the use of finger prints. The former is the creation of the late Alphonse Bertillon, head of the Criminal Identification Department of Paris; the latter is largely the work of Sir William Herschel and Sir Francis Galton, although the classification used to make the system available was perfected by Sir Edward Henry, formerly Commissioner of the Metropolitan Police Force of London.

The Bertillon System, introduced into France in 1883, is based on the fact that the dimensions of certain bony portions of the human frame do not vary during the period between adolescence and old age. Bertillon selected certain specific measurements—head length, head breadth, middle-finger length, foot length and cubit—and distributed them in three classes. Each primary heading was subdivided according to height span, length and breadth of ear, the height of the bust and the eye color. To these measurements he added his famous descriptive photography (portrait parlé) and his method of grouping colors and characteristic marks. Later he added finger prints.

Finger prints, first used by English officials in India, were introduced at Scotland Yard in 1901. They are based on the fact that the lines on the surface of the finger tips form certain typical patterns capable of accurate classification. These patterns appear three months before birth and disappear after death only with the dissolution of the body. The lines in each set of finger tips are distinctive, and no two impressions have ever been discovered that are exactly identical.

According to the Henry system of classification finger-print impressions are divided into four types: arches, loops, whorls, composites. Arches are classed with loops and composites with whorls. About 5 per cent of the impressions are arches, 60 per cent loops and 35 per cent are whorls and composites. The ten impressions are divided into five pairs: right thumb and right index, right middle and right ring, right little finger and left thumb, left index and left middle and left ring and left little finger. Only the whorls are given numerical weight. When a whorl appears in the first pair, it counts 16, in the second pair 8, in the third pair 4, in the fourth pair 2, and in the fifth pair 1. The value of each of the first fingers is totaled and to this 1 is added. This gives the denominator. A total is taken of each of the second fingers of the five pairs and 1 is added. This gives the numerator. Primary classifications range from 1/1 to 32/1; 2/1 to 32/2 and, finally, to 32/32, making the total number of combinations 1,024. A secondary classification is required to identify large accumulations of primary classification numbers. A cabinet containing thirty-two sets of thirty-two pigeonholes arranged horizontally provides locations for all arrangements under the primary classification of loops and whorls. The fraction 20/11 indicates the twentieth pigeonhole of the eleventh horizontal row.

Between the Bertillon and finger-print systems a bitter struggle went on for a number of years. Since the death of Bertillon, in 1913, the finger-print system has gained ground very rapidly and has largely replaced its competitor. As has been already pointed out, Bertillon himself made it a supplementary part of his own system. The inability of the Parisian police to discover the person who cut the portrait of *Mona Lisa* from its frame in the Louvre some years ago was due to the fact that measurements, rather than finger prints formed the primary classification. The thief had been in the hands of the police and his finger prints taken. He left impressions on the frame of the picture. Under a pure finger-print system his identity could have been established in half an hour.

The instruments used in measurements are liable to get out of order; no two persons make exactly the same measurements, and men in charge must be specially trained. On the other hand, only a piece of tin and some printer's ink, a rubber cylinder and ordinary white paper are needed to take finger prints. Any person can learn to perform the function with half an hour's practice. There is no possible margin of error. The ordinary system of classification is relatively simple. Mr. Fosdick had his finger prints taken in Vienna, properly classified and filed with about 150,000 others. An official, who knew nothing about what had been done, was called in and after taking the finger prints again, was able, after a three minute's examination, to locate the card in the files. The same experiment was repeated in about a dozen European cities.

The next step has been to devise some system by which the records of one city can be made available for all. Under modern conditions the traveling criminal has come to play a large part in the police problem. There must be wide cooperation, and cities, districts and even countries must combine in their efforts to solve it.

In Great Britain, Scotland Yard has been made the clearing house for all information relating to identification. Other European nations have similar arrangements. The national system is not sufficient. The professional criminal is cosmopolitan. An International Bureau of Identification was discussed at the International Police Congress in 1914.

The finger-print system of identification, however, has some limitations. It is effective only where a criminal's finger prints are on file. In the discovery of an unknown criminal it offers no help. "It is not easy to run in the streets after every suspicious man and beg him to be kind enough to let his finger prints be examined." Other means of identification are therefore necessary. The police must have easy access to all facts, classified for reference to current cases. Much ingenuity has been used by European departments in devising new systems of classification. Files of photographs arranged according to offenses and to methods used by criminals, tattoo and deformity registers, collections of nicknames and aliases, hand-writing files and catalogues of newspaper clippings in regard to crime and criminals are some of the developments to meet these needs.

Modus Operandi Plan

Major L. W. Atcherly, former chief constable of the West Riding of Yorkshire, and now Sir Llewelyn Atcherly, one of H. M. Inspectors of Constabulary, devised a scheme by which a code of the methods of professional criminals could be tabulated and clearing houses established to digest all information received and forward the conclusions to the police of the areas likely to be interested. This plan, described as "M. O.," or *Modus Operandi*, was based upon the fact that most criminals fall into a rut. One will rob only churches; another smashes only jewellers' windows. Some thieves reveal themselves by the cleverness of their methods. It is improbable that a man who has found an effective way to break open a safe will revert to another method to escape identity.

An illustration is given by Mr. Fosdick. A burglary is committed by an unknown person who pasted a piece of sticky flypaper over a window glass, so that it would not fall when broken, then smashed the glass and slipped the latch. The necessary particulars of the crime are sent to the clearing house of the district. By comparison it is shown that similar burglaries have been committed under exactly the same circumstances in other towns in the vicinity. Perhaps in one town the burglar was seen and a description obtained. Gradually crime is linked with crime, offender with suspect, until, finally, an arrest can be made and the finger-print system can be employed to show connection with previous crimes.

The plan as used in connection with crimes against property has ten headings, each relating to a phase of the method employed in the commission of the offense. These headings can be expressed in figures and the whole crime described in a formula. The headings are as follows:

1. *Classword*, kind of property attacked.
2. *Entry*, front, back window.
3. *Means*, ladder, tools.
4. *Object*, kind of property taken.
5. *Time*, day or night, church time, meal hours.
6. *Style*, mechanic, canvasser, agent.
7. *Tale*, alleged business or errand.
8. *Pals*, confederates.
9. *Transport*, vehicle used.
10. *Trademark*, any unusual act.

This system of classification was first established successfully in the north of England. Scotland Yard at first refused to adopt it and a clearing house was established at Hatfield, the headquarters of the Herts Constabulary. At last, during the World War, Scotland Yard accepted the plan and used it in connection with the crime index. Its effectiveness and utility have much increased.

Many inquiries suitable for handling by this method are received daily at Scotland Yard and are referred to the small staff detailed to this work. Perhaps some country police force has been troubled by a series of burglaries where a garden spade has been used to force an entry and the burglar has taken certain specified articles. Preliminary use of the indexes reveals the fact that half a dozen burglars use garden spades. The cards show that of the six, three are in prison, a fourth is out of the country, the fifth is missing, and the sixth is reported to be going straight. The record of No. 5 is sent with an explanatory letter to the local police, who find that No. 5 is living in their district, and he is soon arrested. The newspapers record "a smart capture" by the police, but no mention is made of Scotland Yard.[1]

THE ARGENTINE SYSTEM

In Buenos Aires a *credential system* is in use which it is claimed by its advocates makes murder, robbery, swindling and bigamy virtually impossible. Buenos Aires with a million and a half inhabitants has hardly 5 per cent as much crime as New York. A leather booklet about two by three inches and hardly as thick as a small checkbook has stamped on the outside:

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[1] FOSDICK, "European Police Systems," Chap. IX, The Century Company, 1915; DILNOT, "The Story of Scotland Yard," Chaps. XXXIII–XXXVI, Houghton, Mifflin Company, 1926; HENRY, "Classification and Uses of Finger Prints," 5th ed. London, 1922.

REPUBLICA ARGENTINE
CEDULA DE IDENTIDAD
BUENOS AIRES

On opening the booklet it is seen to contain a small photograph, a signature, a thumb print and a number. There is a description of the holder, his business, birth place, whether married or single, and the signature of the chief of police.

The plan was initiated in Buenos Aires in 1917. It was made voluntary, but its success was so great that in 1921 it was made mandatory by law. Every honest person finds it more than convenient and only the criminal fears it. It safeguards one's life at every turn. A case of mistaken identity can immediately be settled; it stops false pretensions; it provides identification in case of fatality, and it shows the bearer's signature for reference at banks or elsewhere when signing checks.

Crime due to the lack of control of the residents of a great city and lack of knowledge of those who frequent the underworld would be largely abolished by means of the credential system. A man may commit a crime in one city, go to another city, register under one name at a large hotel without creating suspicion. The next morning he pays for his room, goes around the corner and rents a room in a private house under another name. There can be no investigation by the hotel clerk or the woman who rents the room under the American system, but under the credential or Argentine plan it becomes habitual for hotel clerks and women renting rooms to ask for an inspection of the little books.

The credentials are renewed each year. Facsimiles of the credentials are kept on file at police offices and when a credential is presented it is only necessary to note the number and then by going to the office to see the original. If there is any forgery, the fraud is instantly exposed. If a credential is lost, it is duplicated and replaced at once upon request. The lost credential is of no use to any one else and turns up in time in the hands of the police.

The Argentine system assumes a degree of control by the government over citizens that is foreign to the American point of view. It involves something like the attitude toward the state which is found in Germany, where the Meldewesen or registration system requires every individual to report to the police when he comes into a city. This applies to foreigners as well as citizens. People who rent rooms are required to report to the police new persons lodging with them under penalty of a fine for neglect. A foreigner must present his passport to the police or the head of the family with whom he resides will incur a fine. Temporary residents are checked up through the hotels. In Berlin the system has been in operation since 1836 and the files contain the names of all persons born in the city or who have at any time lived there. An enormous amount of detail is inevitable in the administration of such a plan. The information is at the disposal of any citizen for a small fee. It has many official uses; it notifies the tax board of new arrivals subject to taxation; the school boards check up the compulsory education law; the military authorities learn of persons who have not served in the army, and information is compiled for election lists and for the administration of insurance laws.

Neither the Argentine or German system could be duplicated in the United States. They are too much out of harmony with American individualism. At the same time, it is apparent that effective dealing with modern crime conditions will make necessary a great deal more concentration and organization of agencies than has so far been accomplished or even suggested for the remote future.

FEDERAL AND STATE BUREAUS OF IDENTIFICATION

The Federal Department of Justice maintains the only bureau of identification in the United States that may be considered of national scope. It can not require chiefs of police, sheriffs and constables to send in finger prints. It is established merely for their convenience; they may use it or not. There are now some 481 chiefs of police using the bureau, but they use it only in case of necessity and do not send to Washington duplicates of all finger prints taken. This failure of complete registration means a great lack of efficiency even for those cities that do use the bureau. Only 362 sheriffs out of the two to three thousand in the country have ever used it, and, as in the case of the chiefs of police, they have not sent duplicates of all finger prints taken but merely an occasional one.

Only thirteen states now have state identification bureaus and some have hardly begun to function—only three were established before 1920. The dates are as follows:

New York, 1896
Massachusetts, 1905
California, 1918
Iowa, 1921
Nebraska, 1921
Ohio, 1923
Washington, 1923
Michigan, 1925
North Carolina, 1925
Oklahoma, 1925
Indiana, 1927
Minnesota, 1927
Utah, 1927

A state bureau is an invaluable aid to all agencies and organizations that deal with offenders. Out of the first 48,000 finger prints received by the California bureau, 7,500 were found to have had prior criminal records, unknown to the arresting authorities. Many habitual delinquents, when confronted with the records of their previous convictions, plead guilty and save the state the expense of trial. Six hundred and sixteen of the arrests were fugitives escaped from penal institutions outside of the state. Their identification and extradition eliminated the expense of prosecution and confinement in California.

Such bureaus are needed to develop finger-print work in rural areas and to standardize the work of identification throughout the state. The detection of criminals, one of the weak points in our police work, would be greatly facilitated. To punish severely the few who are caught does not afford the protection to society that would result if a large percentage of law breakers was apprehended and given reasonable sentences. State bureaus are indispensable units in a national system of criminal identification. It is impossible for the federal bureau to do all the work. Its function is to serve as a clearing house for all the forty-eight states.[1]

Review Questions

1. Define social control and indicate the many forms of social control that have developed in human society.
2. How was social control manifested in primitive society? In what form do these methods survive in the present?
3. How does Parmelee define crime?
4. What are the three parts of the machine of criminal justice?
5. What is the importance of the police?
6. Name the different types of police officers and describe their historical development.
7. What are the faults of the rural police?
8. What are the reasons for the creation of state police?
9. Describe the recommendations of the Minnesota Crime Commission.
10. What has been done in Iowa?
11. What are the reasons for the inefficiency of the city police?
12. What were the results of the tests given to the Cleveland police
13. Describe the "mopping up" of Los Angeles.
14. What is meant by a "preventive policeman"?
15. Describe the development of policewomen.
16. What is the importance of police records?
17. What has been done for the development of uniform crime records?
18. What essential facts should be included in police reports?
19. What kinds of investigation are involved in the detection of crime?
20. What systems of criminal identification have been developed in Europe?
21. Compare these systems and point out their advantages and disadvantages.
22. Describe the credential system used in the Argentine Republic.
23. What are the objections to the establishment of the system in the United States?
24. What bureaus of identification have been established in the United States and what are their weaknesses?

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[1] *Report of Subcommittee* to the National Crime Commission on Criminal Statistics and Identification of Criminals, Dec. 5, 1927.

Topics for Investigation

1. Discuss the various methods of social control. See Lumley, "Means of Social Control."

2. Outline an effective police system. See Gillin," Criminology and Penology," pp. 732–744.

3. Compare police systems in Europe and America. See Sutherland, "Criminology," p. 191, and Fosdick, "American Police Systems."

4. How can our police system be improved? See Bierstadt in *Harpers Magazine*, pp. 61–70, December, 1927.

5. Study the duties of the police as described by Cahalane, "The Policeman."

6. Describe the development of the metropolitan police force in London. See Dilnot, "The Story of Scotland Yard."

7. Describe the work performed by policewomen. See Hamilton, "The Policewoman," and Owings, "Women Police."

8. Explain the origin and use of finger printing. See Henry, "Classification and Uses of Finger Prints," and Kuhne "The Finger Print Instructor."

9. Discuss the organization and administration of state police. See Smith, "The State Police," and books by Mayo and Van de Water.

10. Study the work of August Vollmer. See the *Journal of Criminal Law and Criminology*, March, 1917, pp. 877–898, and *The Survey*, June 1, 1929.

11. Discuss the need for uniform crime records. See pamphlets published by the committee appointed by the International Association of Chiefs of Police.

12. Study the reports of the Detroit, Michigan, and Buffalo, New York, police departments for 1928.

13. Describe a campaign for the discouragement of crime through the psychological effect of fear upon criminals. See *The Independent*, Sept. 12, 1925.

14. Discuss the equipment, working conditions and pay of the police. See *Cleveland* and *Missouri Surveys*.

Selected References

1. SUTHERLAND: "Criminology," Chap. IX.
2. GILLIN: "Criminology and Penology," Chap. XXX.
3. FOSDICK: "American Police Systems," Chaps. I, VIII–XI.
4. FOSDICK: "European Police Systems," Chaps. VI–X.
5. GRAPER: "American Police Administration," Chaps. I, IV, VII, IX.
6. CAHALANE: "The Policeman," Chaps. II, V, IX–X, XII, XVII.
7. CAHALANE: "Police Practice and Procedure," Chaps. IV–V, VI–IX
8. WOODS: "Crime Prevention," Chaps. I–IV, IX.
9. WOODS: "Policeman and the Public," Chaps. I–IV, IX–X.
10. HAMILTON: "The Policewoman," Chaps. I–IV, IX–XII.
11. OWINGS: "Women Police," Chaps. VI–X, XIV.
12. THOMPSON: "My Experiences at Scotland Yard."
13. DILNOT: "The Story of Scotland Yard," Chaps. I–VI.
14. DILNOT: "Great Detectives and Their Methods," Chaps. I–V.
15. MITCHELL: "Science and The Criminal," Chaps. II–IV.
16. KUHNE: "The Finger Print Instructor," Part I.
17. HENRY: "Classification and Uses of Finger Prints."
18. SMITH: "The State Police: Organization and Administration," Chaps. I–II, VIII.
19. "The Missouri Crime Survey," Part I, pp. 19–55.
20. "Criminal Justice in Cleveland," Part I, Chaps. I–VIII, pp. 3–82.
21. The Police and The Crime Problem in *The Annals of the American Academy of Political and Social Science*, November, 1929.

CHAPTER VI

CRIMINAL LAW AND PROCEDURE

Existing legal systems are derived almost entirely from two sources, the Roman civil law and the English common law. The systems of Roman origin cover most of Europe, South and Central America; those of common law origin cover most of the British Empire and of the United States. The systems based upon the Roman law have usually been codified. The most notable modern example is the *Code Napoleon,* created by order of Napoleon at the beginning of the nineteenth century. It incorporated a large part of the civil law and it still constitutes a major portion of the French jurisprudence and of many other countries. The common law has its roots mainly in Anglo-Saxon sources and has evolved in a more or less hit-or-miss fashion by the decisions of courts and the statutes passed by Parliament. Consequently, the common law furnishes an example of the more or less spontaneous development of social control.

With the evolution of criminal law it became necessary to work out a mechanism for applying it. Criminal procedure, as that mechanism, operates through courts and judges. The two principal types of procedure are the procedure of accusation and that of investigation. The criminal procedure of all nations of European civilization is based upon these two fundamental types.

The procedure of accusation developed out of private retaliation inflicted by one individual upon another for a wrong suffered. The fundamental theory of this type is that the trial is a combat between two individuals. It is a legal means of securing vengeance.

The procedure of investigation seems to have originated in the Roman law. Later it was elaborated in the ecclesiastical courts and was adopted by the secular law. It replaced the procedure of accusation on the European continent and remained in force until the French Revolution. Its underlying theory is that the pursuit and punishment of criminals are of the greatest importance for society. Consequently, society has the right to begin a criminal process. The criminal process is not a contest between two adversaries, but is a trial of the prisoner before an impartial judge, who represents society, which is the real opponent.

The principal example of the procedure of accusation is the English system of procedure, while the leading example of the other type is the French procedure. After the French Revolution the jury was introduced into the procedure of investigation and was a modification in the direction of the procedure of accusation.

American criminal law and procedure has been derived in large part from English sources. Louisiana is the only state in which the French or Continental influences have survived to the present day.[1]

To understand the administration of criminal justice in American cities today, we must first understand the problems of administration of justice in a homogeneous, pioneer, primarily agricultural community of the first half of the nineteenth century, and the difficulties involved in meeting those problems with the legal institutions and doctrines inherited from seventeenth century England. We must, then, realize the problems of administration of justice in a modern heterogeneous, urban, industrial community and the difficulties involved in meeting those problems with the legal and judicial machinery received from England and adapted and given new and fixed shape for pioneer rural America.

Our Anglo-American judicial and prosecuting organization, criminal law and criminal procedure presuppose a farming community of the first half of the nineteenth century. We are employing them to do justice in a heterogeneous, diversified, crowded city population. The chief concern under rural conditions was the occasional criminal, the criminal of passion and the mental defective. The task was to restrain them in a society little diversified economically and, for the most part, controlled by deep religious conviction and strict moral training. Organized professional criminality and commercialized vice were unknown. Large cities have come upon an administrative and judicial machinery made for rural communities and simply added to or patched, from time to time, to meet special emergencies. The professional criminals have learned to use this machinery and to make devices intended to temper the application of criminal law to the occasional offender a means of escape for the habitual offender.

When, at the end of the eighteenth century and in the early nineteenth century, we began to build an American criminal law out of English materials, the memory of the contests between courts and crown in seventeenth century England—of the abuse of prosecutions by Stuart kings, and of the extent to which criminal law might be used as an agency of religious persecution and political subjection—was still fresh. Hence, a hundred years ago the problem seemed to be how to hold down the administration of punitive justice and protect the individual from oppression rather than how to make criminal law an effective agency for securing social interests.

Puritan jealousy of administration, pioneer self-reliance, and inherited fear of political oppression by governmental agencies were decisive in the shaping of criminal law in its formative period. Three important results follow: (1) the complicated, expensive and time-consuming machinery of a common-law prosecution was exaggerated, lest some safeguard of individual liberty be overlooked; (2) the power of the judge to control the trial and to hold the jury to its province was curtailed; and (3) the administration of criminal law was enfeebled by both of the preceding developments.

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[1] Parmelee, "Criminology," pp. 272–279, The Macmillan Company, 1918.

Furthermore, a change took place in the choice and tenure of judges after 1850. In rural pioneer America the elective short-term judge did not work badly, although it is significant that the great names in American judicial history belong, with scarcely an exception, to the era of appointed judges with permanent tenure. To-day judges in rural jurisdictions, elected for relatively short terms, are reasonably satisfactory. The elected short-term judge under urban conditions is responsible for the unnecessary continuances and postponements, the difficulties in obtaining juries and the wranglings of counsel. It is significant that these things are almost unknown in jurisdictions in which judicial tenure is permanent.

We have made many improvements in the civil side of the law during the last generation. Much has been done, also, in civil procedure in the past two decades. But criminal law has stood still and, with a few notable exceptions in one or two localities, criminal procedure remains what it was fifty years ago. The neglect of the criminal law by the leaders of the bar, reflected in the law schools, results in a backward condition which is advantageous to the law breaker and to those who make a livelihood by representing him. We must reshape criminal law so as to maintain general security and at the same time maintain the social interest in the human life of every individual under the circumstances of the modern urban industrial conditions in the United States.[1]

The Failure of the Courts

There has been criticism of the courts for a long time and, in recent years, it has been expressed by such leaders as the late Chief Justice Taft and Dean Pound.

Nearly twenty years ago the president of the Prison Association of New York at the end of a discussion of "the punitive system of criminal law" declared that "of all the agencies and influences that tend to the increase of crime in the United States, it is safe to say that the penal codes and the punitive system of the criminal law, inheritances from the middle ages, are the most potent and insidious."[2]

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[1] Adapted from Pound, Criminal Justice in the American City, Part VII of the *Cleveland Foundation Survey of Criminal Justice in Cleveland*, pp. 32–47, The Cleveland Foundation, 1922.

[2] Smith, "Criminal Law in the United States," p. 64, Russell Sage Foundation, New York, 1910. One part of four volumes prepared for the Eighth International Prison Congress.

Galsworthy's drama "Justice" graphically presents the contrast between essential or substantial justice and the product of the legal machine.

The story of "Justice" is the story of a weak man of humane motives but of timid nature and imperfect moral sense who runs foul of the machinery of the law. A young woman, Ruth Honeywill, the mother of two children, has a brute for a husband. He illtreats her unmercifully. A young law clerk, William Falder, becomes acquainted with her and not only is outraged by her sufferings but becomes devotedly attached to her. To protect her and her children he plans to take her away to South America and marry her. To do this he needs money. In a moment of desperation, after seeing her bruised, he raises a figure on a check. The forgery is promptly discovered, but circumstances make it easy for Falder to cast suspicion for a while upon a fellow clerk. At last, however, he confesses. His employer whom he undertook to defraud is a humane man, but insists, for the sake of justice, that the clerk be prosecuted. At the trial Falder's counsel pleads in vain for mercy. Falder is sent to prison. After two years he is released on parole, tries to secure work, plans again to rescue Ruth Honeywill, discovers that in her plight she has sacrificed her womanly honor for the protection of her children, and, upon being rearrested for the violation of a rule of his parole, kills himself. The story is a gloomy one, scarcely relieved by the kindly whimsicality of Cokeson, the senior law clerk, who figures throughout as the constant friend of the weak-willed Falder. It is a tragedy. After the dramatic action begins it moves steadily and inexorably to the unavoidable end. Destiny is as unrelenting in this as in any Greek tragedy. The propelling power of the tragedy in this case, however, is not blind fate, but the English system of justice. And that legal system shows itself in this case to be as impersonal and pitiless as any pagan deity. The people in the drama are not inhuman; the employer who insists on the prosecution shows sympathy as well as conscience. The jury are common mortals. The governor, chaplain, and doctor of the prison are men with feelings like the rest of mankind. It is the impersonal machine of the law that is the destructive power which none can resist. It is the same legal system that we know in America. As Falder's counsel says:

> Justice is a machine that, when some one has given it the starting push, rolls on of itself. Is this young man to be ground to pieces under this machine for an act which at the worst was one of weakness? Is he to become a member of the luckless crews that man those dark, illstarred ships called prisons? Is that to be his voyage—from which so few return? Or is he to have another chance, to be still looked on as one who has gone a little astray, but who will come back? I urge you, gentlemen, do not ruin this young man!

The contrast between essential justice and an impersonal legal machine is heightened by the words of the judge addressed to the prisoner:

> Throughout the trial your counsel was in reality making an appeal for mercy . . . He claimed that you should be treated rather as a patient than as a criminal. And this plea of his, which in the end amounted to a passionate appeal, he based in effect on an indictment of the march of justice, which he practically accused of confirming and completing the process of criminality . . . I do not follow him in these flights. *The law is what it is*—a majestic edifice, sheltering all of us, each stone of which rests on another. I am concerned only with its administration.

This contrast between substantial justice and the product of the legal machine, thus expressed in general terms by two of the characters of the play, is shown on the stage in the terms of human life and human character.

At the opening performance in New York City, Thomas Mott Osborne attended, at the request of the *New York Tribune,* and wrote his impressions. He pointed out that "we do not shudder when we think of a man with a broken leg being sent to a hospital, for we know that he will not come out with two broken legs, or, if he has a strained tendon, that he will not come out with a compound fracture. Yet that is about what we feel will happen to the morally injured man who is sent to prison."

The play dramatically drives home the fact that society has been "punishing" criminals by rendering the man, already too weak to resist evil, still weaker and still more incapable of either helping himself or receiving help from others.[1]

Dean Pound has humorously illustrated the lack of flexibility of the law in a lecture upon Judicial Empiricism in which he quotes the story of Tom Sawyer and Huck Finn in their attempt to rescue Jim.

> When Tom Sawyer and Huck Finn had determined to rescue Jim by digging under the cabin where he was confined, it seemed to the uninformed lay mind of Huck Finn that some old picks the boys had found were the proper implements to use. But Tom knew better. From reading he knew what was the right course in such cases, and he called for case-knives. "It doesn't make no difference," said Tom, "how foolish it is, it's the right way and it's the regular way. And there ain't no other way that I ever heard of, and I've read all the books that gives any information about these things. They always dig out with a case-knife." So in deference to the books and to the proprieties the boys set to work with case-knives. But after they had dug till nearly midnight and they were tired and their hands were blistered and they had made little progress, a light came to Tom's legal mind. He dropped his knife, and, turning to Huck, said firmly, "Gimme a case-knife." Let Huck tell the rest:
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> "He had his own by him, but I handed him mine. He flung it down and says, 'Gimme a *case-knife.*'

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[1] *The Outlook,* vol. CXIII, pp. 246–248, May 31, 1916.

> "I didn't know just what to do—but then I thought. I scratched around amongst the old tools and got a pickax and give it to him, and he took it and went to work and never said a word.
>
> "He was always just that particular. Full of principle."
>
> Tom Sawyer had made over again one of the earliest discoveries of the law. When legislation of tradition prescribed case-knives for tasks for which pickaxes were better adapted, it seemed better to our forefathers, after a little vain effort with case-knives, to adhere to principle—but use the pickax. They granted that law ought not to change. Changes in law were full of danger. But, on the other hand, it was highly inconvenient to use case-knives. And so the law has always managed to get a pickax in its hands, though it steadfastly demanded a case-knife, and to wield it in the virtuous belief that it was using the approved instrument.

Dean Pound's conclusion is that if the trouble is in the traditional element of our legal system, the remedy is an infusion of social ideas into that traditional element:

> . . . The right course is not to tinker with our courts and judicial organization, but rather to provide a new set of premises, a new order of ideas in such form that the courts may use them and develop them into a modern system by judicial experience of actual causes. A body of law which will satisfy the society of today cannot be made out of the ultra-individualistic materials of eighteenth century jurisprudence and nineteenth century common law based thereon, no matter how judges are chosen or how often they are dismissed. For a great part of the way must be prepared by juristic science and by careful legislation, as the legislation of the reform movement in the first half of the nineteenth century was framed on the basis of Bentham's doctrine of utility.

The fundamental difference between the law of the nineteenth century and the socialized jurisprudence that will cure the abuses of the existing system is not "due to the dominance of sinister interests over courts or lawyers," but is due to a clash between traditional conceptions and modern conceptions "born of a new movement in all the social sciences. Study of fundamental problems, not reversion to justice without law through changes in the judicial establishment or referenda on judicial decisions, is the road to socialization of the law."[1]

In 1919 the Carnegie Foundation for the Advancement of Teaching published the results of five years of investigation concerning the fairness of our judicial institutions tested by their ability to secure justice to the poorer citizens and immigrants. The author of the report, Reginald Heber Smith of the Boston Bar, had had first hand experience, while acting as counsel to the Boston Legal Aid Society, as the lawyer for fifteen thousand clients, consisting of the poorer citizens and immigrants in a metropolitan community, including about two thousand soldiers and their dependents. His conclusion, after attempting to enforce their rights and redress their wrongs, was "that the administration of justice in this country is not impartial, in fact, that the rich and poor, strong and weak, intelligent and ignorant, do not stand on an equality before the law, and that in the cases of millions of honest, humble, plain people it permits unconsciously a denial of justice which is serious in its consequences to the large numbers affected and dangerous to the nation because of the attitude toward government that it produces."

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[1] Pound, "The Spirit of the Common Law," pp. 166–167, 190–192, Marshall Jones Co., Boston, 1921.

Before submitting the evidence which forced him to reach his conclusion, Mr. Smith made certain statements of a general nature. He declared his belief in the substantial impartiality of the great part of American law. He felt that justice is best administered by a trained judiciary. In his opinion "our judges constitute the most faithful, upright and intelligent group of public servants in the country." Denial of justice to the poor is not done consciously by the judges, and no dominating class has deliberately brought about the situation. It has come about through fundamental economic changes over which no class had control.

The serious imperfections in our present administration of justice, according to the report, may be summarized under four headings:

1. Reorganization of courts.
2. Simplification of procedure.
3. Equalization of administration of justice.
4. Lack of a Bureau of Justice.

The first two items do not need much explanation. The idea contained in the fourth subject is that, if the machinery of justice were today made perfect, it would in a decade again need revision. Hence the need for somebody to keep the law abreast of changing conditions and to keep the administration of justice in touch with the needs of a progressive society.

As to the equalization of justice, it is clear that, if there is a difference in the ability of classes to use the courts, to make them more efficient, swifter and surer will only serve to increase that disparity. If a workman is too poor to retain a lawyer, it will certainly give him no comfort to know that an appeal will be heard within three months instead of three years. Suppose the immigrant from his contact with justice in the lower criminal courts, where he has been preyed on by runners, shysters and straw bondsmen, mistakes the part which he knows for the whole, may he not conclude that our judicial institutions ought to be overthrown? Hence, it is of great importance to understand what are the shortcomings in the administration of justice which give rise to inequalities.

The causes of inequality are illustrated by the following case:

> One Saturday afternoon an Italian, who had been in America just long enough to be a naturalized citizen, came to my office and stated that several weeks before he had been met at the gates of the factory where he worked by an

agent of the Adams Phonograph Company, Incorporated, who had persuaded him to take a phonograph "on approval" and who had asked him "as a matter of convenience" to sign his name and address on a plain sheet of paper which, however, was folded in half. The machine was priced at $43 and the Italian, perhaps after a little domestic pressure, realized he could not afford it and so notified the company to take it back. The company replied that the transaction was a sale, that he must pay $43 or it would be collected out of his wages. When he called at the company's office to protest he was shown an unfolded piece of paper, the lower half plain except for his signature and address, and the upper half a printed assignment of wages in legal form. The assignment had been served on the employer who had held up the week's wages. The phonograph company took no further action. Three weeks had gone by; each week the employer had retained the wages, and the Italian finally came to the Legal Aid Society. He concluded his story by explaining, with much force, that he had nothing in the house for his wife and children to eat, that his credit was exhausted and that he did not know where to turn.

Consider for a moment the administration of justice from his point of view. To sue his employer in contract was the last thing in the world he was willing to do, partly because he realized his "boss" was only obeying the law on wage assignments, chiefly because he did not want to lose his job. If he sued the company in tort in the Municipal Court, he could get a trial within a few weeks, but the company would certainly remove the case to the Superior Court, claiming trial by jury, and then a delay of months would occur. If he attempted to get into equity to have the assignment cancelled for fraud he would be obliged first to pay about six dollars as costs, which he did not have, and then to engage a lawyer to draw and present a bill of complaint and he had no money to pay a lawyer's proper charges.

To my mind it is not an exaggeration to say that for the Italian there was no law. In the face of a palpable wrong the courts of Massachusetts, as organized by law, were powerless to grant redress. From the Italian's point of view there might just as well have been no law, no courts and no judges.

If the bar dissents from this opinion I know that it is accepted without reservation in at least one quarter. The Legal Aid Society received scores of similar cases against the phonograph company. It has built up and was conducting a flourishing business on this interesting principle—that as against the poor the law may be violated with impunity.

The reasons for the inability of the poor to secure redress through the machinery of justice are made manifest in the above case. First is delay. When delay means starvation it is obvious that there will be a "settlement" out of court long before there is any adjudication of rights. Second is that tariff levied on justice by the state and which we call court costs and fees. Moderate they may appear to many of us, but the impression they convey to the poor is that the doors of the courts can be unlocked only by a golden key. Third is the expense of engaging counsel. This is the *great and the chief cause of our existing denial of justice.*[1]

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[1] Smith, Denial of Justice in *Journal of the American Judicature Society*, vol. III, pp. 112–114, December, 1919; Smith, "Justice and the Poor," published by the Carnegie Foundation for the Advancement of Teaching, 1919.

THE ORGANIZATION OF THE COURTS

The administration of justice falls within the jurisdiction of the states, except in cases where the authority of the federal government is concerned. Stealing is an offense against the laws of a state unless it involves interference with the business of the post office, when it is dealt with by the federal courts. In the same way, offenses against liquor and drug laws fall under federal jurisdiction, but the wider range of criminal acts is provided for by state legislation.

Since the jurisdiction of the state is independent of federal control, there are forty-eight different court systems in existence in addition to the system of federal courts. The general plan of organization is the same, variations depending largely upon the relative distribution of population and the comparative economic development. The newer states of the West have copied the laws and organization of the older states, as those states, in turn have used as a basis the institutions of England.

The administration of justice in Iowa may be regarded as typical of the different state jurisdictions. The county is the normal area, except for the limited territorial districts of the inferior courts. The constitution provides that "the judicial power shall be vested in a supreme court, district courts and such other courts inferior to the supreme court, as the General Assembly may, from time to time, establish."

In accordance with the constitutional provision and the statutes enacted under it, the following system of courts is in existence in the state: (1) the system of inferior courts, including the justice of the peace court, the mayor's court, the police court, the municipal court, and the superior court; (2) the courts of special jurisdiction, including the court of conciliation, the juvenile court and the probate court; (3) the court of general jurisdiction, the district court; and (4) the Supreme Court.

The inferior courts comprise the lower courts having limited criminal and civil jurisdiction as contrasted with the district court, which is a court of almost all-inclusive jurisdiction. The justice of the peace is the people's judge—near to the people to furnish prompt relief in civil matters and to administer the criminal law without delay. Almost every kind of a criminal case may come before a justice for, even in cases in which he does not have jurisdiction, he may pass upon the question of detention and custody pending the action of the grand jury. The constable is the executive officer of the justice, but the sheriff may perform any of the required duties. Justices have civil jurisdiction in cases in which the amount in controversy does not exceed one hundred dollars, and by consent of the parties it may be extended to three hundred dollars. Their criminal jurisdiction covers all offenses less than felony in which the penalty does not exceed a fine of one hundred dollars or imprisonment for thirty days.

A considerable portion of the business within the jurisdiction of the justice now passes directly to the district court. Not infrequently, persons are elected to the office who decline to qualify. A study of reports of fifty-three counties having a total of 859 townships showed a total of only 631 justices out of 1,718 possible justices provided for by law. The justice's office is usually filled in cities and towns and it generally functions quite satisfactorily.

The mayor's court is chiefly a tribunal of summary procedure for the enforcement of the city ordinances. The mayor has exclusive jurisdiction of all actions or prosecutions for violations of city or town ordinances where no superior, municipal or police court exists. He has the same jurisdiction in civil and criminal matters as the justice of the peace within the township.

The police court has the same jurisdiction as the justice court and mayor's court in criminal actions. It has no civil jurisdiction. The police court is a court of record, but the judge is not required to be an attorney at law. If he is an attorney, he is not prohibited from civil practice during his term of office. The proceedings in the police court are similar to those before a justice of the peace. Appeals are taken from it to the district court.

Before the police courts come hardened criminals, vagrants and tramps—"floaters"—and youthful offenders caught in their first delinquencies. These courts are often crowded, and the summary disposal of cases allows little attempt at adequate judicial investigation. The judge has need of wisdom, a sense of humanity and a high type of personality. The office requires a human, just, upright and wise administrator of the law. Unfortunately, such police judges are far too rare.

Municipal and superior courts in Iowa are similar in their jurisdiction and administration of criminal matters to police courts. They have concurrent jurisdiction in civil cases with the district court with certain limitations. The establishment of a municipal court in any city supersedes the police court, the justice of the peace and the superior court. Municipal and superior courts are slightly different kinds of city courts, resulting from legislation passed at different times.

There are only two courts of special jurisdiction in Iowa. The court of conciliation was authorized by law in 1923, but the only one established so far is in Des Moines, and it began operation September 1, 1927. The statute gives the judges of the district, superior and municipal courts the option of adopting the plan for their respective districts. The court is in reality an arm of auxiliary jurisdiction for the specified courts. It has been in existence too short a time to reach any final judgment as to its success or failure. The number of cases has increased from month to month. In 1926 out of 4,535 civil cases filed in munipcial court, 54 per cent were for $100 or less. From 75 to 90 per cent of these could have been adjusted by conciliation, saving time and expense. The same year the cost of juries was $9,780 and there were 130 cases tried by them, making an average of $75 a case for jury fees. The expense is not the chief objection to the old method of trial of small claims. Far more serious are the technicalities, delays and waste of time. They make regular trials almost a denial of justice to poor litigants. This is especially true when the contest is between one who is able to hire a lawyer and one who is not—very common in small cases.[1]

The juvenile court in each county is constituted of the judges of the district court, and in counties where there is a superior or municipal court of the judges of such courts, when designated as judges of the juvenile court by the judges of the district court. The judges of the district court designate one of their own number to act as judge of the juvenile court from time to time. In counties of one hundred thousand and over the district court judges are authorized to select one of their own number to act for the four-year term. They may designate a municipal or superior court judge in each of the circumstances just described.

The jurisdiction of the special courts is very limited and the district court has the residue of original jurisdiction. It is the only court whose jurisdiction extends to practically all controversies, and in which almost any kind of litigation can be transacted. The state is divided into twenty-one districts, composed of from one to nine counties, each district having from two to six judges. The number and boundaries of the districts and the number of judges are changed from time to time by the General Assembly. The judge must be an attorney at law admitted to practice in Iowa and a resident of the district in which he is elected. He cannot practice during his tenure of office. The sheriff is the executive officer of the court. On the whole, the office functions satisfactorily over the state at large. The office of prosecuting attorney is the focal point of the administration of criminal law. The office has been variously criticized because of the inexperience of the officials and because the small salary fails to attract the lawyer who has established a good practice.[2]

CRIMINAL PROCEDURE

The procedure in criminal prosecutions is, in its essential particulars, much the same in all of the states and also in the federal courts. The usual method of instituting proceedings against an offender is by means of an *information* or complaint supported by the oath of a private prosecutor. The information is filed with an examining magistrate and affords the basis for the issue of a *warrant of arrest* which is to be followed by the arrest and hearing before a magistrate. There are in most criminal cases two prosecutors: the private prosecutor who has sustained the injury; and the public prosecutor (county or district attorney) who represents the state. The private prosecutor must have reasonable grounds for belief in the guilt of the defendant. If he proceeds upon a mere suspicion, he lays himself open to a civil action for damages for causing a false arrest. A *warrant* is a formal writ issued in the name of the state to an officer directing the apprehension of an alleged offender.

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[1] SAWYER, Making Justice Less Expensive in the *American Mercury*, vol. XIV, pp. 304–311, July, 1928; AUMANN, Des Moines Tries the Conciliation Court in *National Municipal Review*, vol. XVII, pp. 211–213, April, 1928.

[2] SHAMBAUGH, County Government and Administration in Iowa, "Applied History," vol. IV, pp. 320–362, State Historical Society of Iowa, Iowa City, 1925

The *warrant* having been given to a police officer, it becomes his duty to take the person named therein into custody. He may call citizens to his assistance and may use all the force necessary to apprehend him, even to the extent of taking life. For an ordinary misdemeanor life can only be taken by an officer when the person to be arrested resists with force and makes the killing necessary in self-defense. *Arrests without warrants* are justifiable in certain cases and may be effected by police officers or by private citizens: in felonies, without warrant if the officer or individual sees the offense committed or has reasonable grounds for believing the person is guilty; in misdemeanors, if the offense amounts to a breach of the peace and is committed in the presence of the officer or citizen. The authority of an officer is somewhat broader than the citizen's.

The *preliminary examination* or *hearing* generally takes place within a few hours after arrest. The purpose is to determine whether there is sufficient evidence to justify holding the accused for further proceedings by the grand jury or trial court. The defendant is entitled to have a copy of the charges against him, to have free access to counsel and to bail, except for capital offenses where the proof is evident, or the presumption of guilt is great. After the examination is over and the accused held, the magistrate must make a return of the case to the higher court, usually within a limited number of days after the hearing.

The object of the *writ of habeas corpus* is to obtain the production of a party before a court or judge. It is the proper remedy for a person who is being held in jail without legal right—where the charge is not being pressed, or where excessive bail has been fixed. Application is made in the form of a petition to a judge by the person detained, or his attorney. It is a means by which arbitrary or mistaken actions by a magistrate in the preliminary stages of a criminal prosecution may be corrected.

The most common duty of the grand jury is the consideration of *indictments*. The *indictment* is prepared by the district attorney and is based on the findings of the committing magistrate. If the jury is convinced that probable cause for a prosecution exists, the foreman indorses "true bill" on the indictment and signs it. If the examination fails to disclose a case, the jury "ignores the bill," and marks it "ignoramus." Sometimes in the course of an investigation the grand jury discovers evidence of a crime by someone against whom no indictment has been prepared. It has authority to make a "presentment" against such person. This action amounts to an instruction to the prosecuting officer to prepare an indictment for submission to the jury. When this is done, it is marked by the foreman as a "true bill." All true bills are submitted to the court and the jury is discharged by the judge.

An indictment by a grand jury is not the only method by which a person may be brought to trial in the higher courts. It is possible to accomplish the same result by means of an *information prepared by the district attorney* and filed with the court without the action of the grand jury. There are varied provisions in the different states. In some, indictment by the grand jury is necessary for felonies; in others, the information may be used in all cases. The district attorney may in some states initiate the prosecution when he has been advised by the affidavits of witnesses that a certain crime has been committed. The more common method is to base the information upon the findings of the preliminary examination.

The next step after the formal indictment is the bringing of the defendant before the court. This is called the *arraignment*. If the defendant is in custody, he is produced by the sheriff; if out on bail, he and his sureties are notified. If he fails to appear, the court will issue a warrant for his immediate arrest, and if he cannot be found, the judge will direct the district attorney to make the surety pay the amount of the bail to the county.

If the defendant believes that he has been improperly indicted, the arraignment gives an opportunity to move to quash the indictment. If this motion is not sustained by the judge, the defendant must plead "guilty" or "not guilty." The plea of guilty admits the correctness of the charge and confers authority on the court to pass sentence. If the plea is "not guilty," the case is ready for trial. A plea, once made, may be changed at the discretion of the court. There are several other pleas which may be entered under certain circumstances.

The first step in the trial of a case is the *selection of a jury*. In most jurisdictions a jury trial is required, whether the defendant wants it or not. The court is provided with a panel of thirty or forty jurors, selected from tax lists or lists of voters. The methods used in the selection differ in the various states. In some, the selection is entrusted to elected or appointed jury commissioners, in others to the sheriff, clerks or to the judges. The statutes generally prescribe in detail the manner of selection. The names are put in a box, in which they are indiscriminately mixed. When a jury is needed, the judge directs the official charged with the duty to draw at random the requisite number of names, and to summon them for service at the designated time. The drawing of twelve persons to serve in each particular case follows a regular routine. There may be objection to the entire list of jurors, "peremptory challenges" to a limited number, and "challenges for cause" to an unlimited number. The number of peremptory challenges is regulated by statutes. Usually only a few are permitted in cases involving minor crimes, whereas in felonies, and especially in murder cases, as many as twenty or thirty may be allowed.

In serious cases the selection of a jury usually consumes a great amount of time, especially if the case is vigorously contested. When the jurors have been selected and sworn, the case is ready to proceed. The prosecution has the burden of proof. Accordingly, *the district or county attorney makes the opening speech* to the jury, stating briefly the charges contained in the indictment, and outlining the evidence to be offered in support. He calls the witnesses for the state, conducts the direct examination and, after the cross-examination by the defendant's counsel, he may conduct a redirect examination. When all the witnesses have been examined and all other evidence has been introduced, he advises the court that the prosecution rests its case.

The *defense then proceeds to present its evidence* unless, by motions made, it succeeds in getting the judge to dismiss the case. When witnesses for the defense are called, the attorney for the defendant conducts the direct examination and the prosecuting attorney cross-examines. Each side objects to questions from time to time, and the judge sustains or denies the objections.

At the conclusion of the defense, the case is ready for the *arguments to the jury*. As a rule the *first speech is made by the prosecuting attorney*. The speech may be merely a brief statement, or it may be an elaborate argument according to the importance of the case. The attorney for the defense usually takes full advantage of the opportunity to address the jury. He is supposed to confine his remarks strictly to the evidence in the case, but actually he resorts to every possible device to appeal to the feelings of the jurors.

When the arguments are concluded, the *judge's charge* follows. The function of the charge is to inform the jury of the legal aspects of the case, and to point out to them how they are to use the evidence in arriving at a verdict. He tells them that the presumption is that the defendant is innocent and that the burden is on the state to convince them "beyond a reasonable doubt" that he is guilty. In criminal cases a verdict of guilty should not be based upon a mere preponderance of guilt. In most states the judge is not permitted to comment on the facts in such a way as to indicate his opinion as to the weight of evidence. The rule is that the law is for the judge and the facts for the jury.

The jury is now ready to consider the *verdict*. Frequently, in minor cases, they will render it without leaving the court room. In more serious cases they retire to the jury room. When they have reached a conclusion, they return to the court and the foreman announces it. The accused has the right to have the jury polled—each juror must state that he concurs in the verdict. A unanimous verdict is almost universally required.

Finally the defendant is called to the bar of the court for *sentence.* The statutes provide for the penalties to be imposed for the various crimes. Ordinarily it is within the discretion of the judge to suspend sentence and place the convicted man on parole if the offense is a minor one. The laws of the United States and of the various states provide for the taking of appeals in criminal cases and prescribe the procedure. The application must generally be made within a few weeks after the final judgement of the trial court.

The forms of procedure, just described, developed under conditions where it was necessary to provide safeguards for the accused. The danger of an oppressive exercise of the power of the king constantly threatened. Hence the obstacles placed in the way of swift progress from arrest to sentence. The present situation does not need to fear overzealous prosecution, but the escape of the guilty from conviction because of the many delays growing out of complex and elaborate procedure.

There are three distinct opportunities for the accused to escape prosecution—the preliminary examination, the grand jury and the regular trial. Furthermore, all along the way motions may be made to dismiss or delay proceedings. Finally unrestricted right of appeal has proved a very serious evil. Appeal should only be allowed where there is reasonable doubt as to the result of the trial.

Our sporting theory of criminal justice has come to be regarded as a game or fight between lawyers. Professor R. M. Perkins has declared that "the Great American Game is the trial of a criminal case." There is, however, no sport about it so far as the poor defendant is concerned. It is only the persons with abundant funds or influence who can make an interesting fight of it. More than fifty cases of vagrancy, drunkenness and disorderly conduct may be disposed of in less than thirty minutes.[1]

THE EXPENSE OF COUNSEL

The cost of engaging counsel is the chief cause of our existing denial of justice to poor persons. Mr. Smith in his study of the administration of justice as it affects poor citizens and immigrants, already referred to, states the situation as follows:

[1] Adapted from Callender, "American Courts, Their Organization and Procedure," Chaps. XII–XIV, McGraw-Hill Book Company, Inc., 1927; Perkins, The Great American Game in *Harpers Magazine,* vol. 155, pp. 750–758; Sutherland, "Criminology," pp. 257–261, J. B. Lippincott Company, 1924.

The nature of this difficulty will, on a moment's reflection, be clear to the judges and the bar. Reduced to its lowest terms: lawyers, like other human beings, must live, and therefore must be paid for their services; yet a vast number of persons need legal advice or court action who are too poor to pay even reasonable fees. The precise number of persons who thus find their path to justice barred is not known, but elsewhere I have attempted an estimate by combining the figures in King's "Wealth and Income of the People of the United States" with the statistics of legal aid organizations in thirty different cities and the conclusion indicated that about eight million people, living in our larger cities, are unable to pay for lawyer's services. Of course, this is an estimate. The conservative may cut my figure in half and the ultra-conservative may, if he pleases, again cut that in half. It will still appear that a plan for administering justice in a democracy which leaves out of account millions of men, women and children is not an adequate plan.

I have called the expense of counsel a difficulty instead of a defect, because, although we can end delays and can abolish costs we cannot eliminate lawyers. The bar is as inherent a part of the administration of justice as the court, and the lawyer is second only to the judge himself in the actual working out of justice. It is unnecessary to elaborate this argument. Every lawyer knows that it is his function to make the machinery work and that without him it would never move. Law is not self-enforcing, and courts do not, of their own motion, redress wrongs. Some one has epitomized this situation by remarking that if the world was going to destruction and court could stop it, the judge would take no action unless some lawyer filed a correctly drawn motion praying for such relief.

This is no criticism of the courts. It is not their function to act of their own initiative. Our plan of justice contemplates that all legal work in first instance shall be done by the agents of the court called lawyers. This is entirely proper. What is improper is that after having erected such a system we have failed to make it possible for all men to obtain the services of those agents.

Theoretically, every one may be aided by the ministers of justice through the court's power to assign its agents to act in behalf of any indigent suitor. This power of assignment of counsel is inherent in every court and it was confirmed by statute as early as the reign of Henry VII. In criminal cases counsel are assigned in some states but in civil cases the plan of assignment has been so far forgotten that its very existence is today denied.

Future jurists and scholars looking back at our time will probably find it difficult to account for the absolute inability on the part of our courts to understand the position of the poor. Historically, it will be evident that from the earliest times the courts had power to waive costs and to assign counsel. In striking contrast, it will appear that in the twentieth century, in a country which had for a century and a half proclaimed the principles of democracy, the courts not only failed to exercise those powers, but for the most part were ignorant of their existence. The legislatures are likewise to blame and the bar as well. The present situation into which we have drifted, unintentionally and unconsciously, is excellent proof of the need for a vigilant Bureau of Justice.

If proof of the failure of our courts to understand the position of the poor is needed it can be found on page 490 in the twenty-third volume of the *Wisconsin*

Reports. One Campbell, a poor man, brought suit against a railroad. The defendant promptly moved that the plaintiff be required to furnish a bond for costs. The plaintiff could not get a bond and his case was thereupon thrown out of court. He appealed. The supreme court lamented the absence of an *in forma pauperis* statute, but forgot its own power to waive costs; it also forgot the constitutional guarantees of freedom and equality of justice.

I hope no man of the type we call Bolshevist ever finds that decision, for it contains too much ammunition for him. Thus, one sentence reads: "It seems almost like a hardship that a poor person should not be able to litigate." Even if the court felt itself powerless, it might at least have had the courage to call the result an outrage. In a country where law is supreme, where every right depends on law, where life, liberty and happiness are at stake, and where the only lawful way to redress a wrong is through litigation, a court reaches a decision which in fact outlaws a citizen and then is a little doubtful in its own mind whether it has even worked a "hardship."[1]

Theoretically, the prosecuting attorney is a judicial officer and is supposed to protect the innocent as well as prosecute the guilty. Actually, he is judged as to his efficiency by the number of convictions. He becomes a partisan, involved in the contentiousness of the courts. As a result he fails to measure up to the standing of an impartial dispenser of justice.

To remedy this situation, provision has been made in most of the states for the assignment of counsel to a person charged with crime who cannot afford to pay a lawyer himself. In some states provision is made for payment and in other states no such provision is made. Sometimes provision is only made for the assignment of counsel in felony cases. Iowa provides for a fee of $20 per day in cases involving life imprisonment and $10 per day in other cases.

In the assignment of counsel, the judge selects either a young, inexperienced lawyer who is anxious to secure practice, or a lawyer who hangs around the court waiting for such business. It is obvious that successful and competent attorneys are not likely to have the time to handle such cases. The result has been that the poor defendant does not secure adequate protection. The assigned counsel in criminal cases has been a general failure. There is legal recognition of the right of the accused person to legal assistance, but no really effective plan has been developed for the actual application of the accepted principle.[2]

THE PUBLIC DEFENDER

Two plans have been worked out to provide defense for poor persons accused of crime or who need assistance in controversies coming under the jurisdiction of civil courts. One plan is to have specialized officials who give all of their time to the defense of those charged with crime in contrast to the prosecuting attorney whose chief function has come to be regarded as that of protecting society by obtaining the conviction of accused persons. The "defender in criminal cases," or "the defender," may be described as a second county or district attorney corresponding to the present prosecuting official and chosen in the same way. He performs the work of the assigned counsel. The other plan is known as "legal aid" and its field of operation has been confined to civil cases.

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[1] SMITH, Denial of Justice in *Journal of the American Judicature Society*, vol. III, pp. 117–118, December, 1919.

[2] SMITH and BRADWAY, Growth of Legal Aid Work in the United States in the *Bulletin of the U. S. Bureau of Statistics*, miscellaneous series, 398, pp. 46–49, January, 1926.

There is no real distinction between the defender and legal aid. Both afford unpriced counsel to poor persons; the former works in the criminal field while the latter for historical reasons operates in the civil field. At an early date legal aid work tried to extend itself to criminal cases, but was not financially strong enough. If it had been able to cover adequately the criminal side, the public defender would not have been developed.

Certain conditions, peculiar to criminal cases, have made apparent the need for defenders. Serious criminal cases cannot be compromised or settled as can civil cases. In most instances a person arrested for felony or important misdemeanor must stand trial. In criminal cases the stakes are liberty and disgrace. It is more important that men should not wrongfully be sent to jail than it is that they should not wrongfully be deprived of civil claims.

Los Angeles and New York have the oldest organizations and are the two outstanding illustrations of the successful operation of the defender idea. The former is publicly supported and the latter privately. The cities of Hartford, Bridgeport and New Haven, Connecticut, have had defenders for several years, as have Minneapolis and Omaha. New London, Windham, Litchfield, Middlesex and Tolland, Connecticut, have established defenders within the last few months as have Memphis, Tennessee, Columbus and Youngstown, Ohio. On December 1, 1926, Chicago established a plan of its own. The Northwestern University School of Law received a generous gift, the income of which was to be used for the legal clinic of the law school. A criminal court branch of the Legal Aid Bureau was established under the control of a committee of three members, one each representing the Chicago Bar Association, the Northwestern University School of Law and the United Charities. The committee has enlisted the services of three hundred members of the Bar on a voluntary basis; the case worker is supplied by the United Charities, and the clinic is under the supervision of a member of the faculty of the law school.

A similar gift has recently been made in New York to render legal aid to deserving persons who cannot afford to pay for the service of lawyers.

California, Connecticut, Nebraska, Minnesota, have state-wide public defender laws, as has also Virginia for cities over 100,000, but in Virginia no salary is provided and no defenders have been established.

Los Angeles was the first city in the United States to provide a public defender in criminal cases, and on January 7, 1914, Walton J. Wood was appointed to the position. He continued in office until 1922 when he was elected Judge of the Superior Court of Los Angeles. Until January, 1924, the public defender of Los Angeles was assisted by a deputy and five assistants besides the clerical and investigating staff. Because of the volume of work, two additional assistants were appointed in January, 1924. In November, 1915, a police court defender was created for Los Angeles. Police court defenders were later established in San Francisco and Cleveland. In July, 1915, a defender for the superior court of Omaha was established.

In New York City there is an organization supported by private funds under the name of The Voluntary Defender's Committee. The Committee pays and directs the work of counsel who will volunteer to take assignments to defend the accused and to represent before sentence those who have plead guilty. They serve on a salary basis, receive no other compensation and do no other work. They are equipped with an office and have the services of trained investigators. The staff is the center of a large association of volunteer workers. Many lawyers are ready to do work in the criminal courts under the direction of the staff. The committee has handled approximately fifty per cent of the felony cases assigned to the county of New York.

The courts of Cleveland expended $32,500 in 1920 upon assigned counsel, while Los Angeles spent in 1917 upon the office of public defender only between $20,000 and $25,000. Judge Charles S. Burnell of the Superior Court of Los Angeles believes that "the entire expense of maintaining the office is saved many times a year because of the unnecessary and useless waste of time that is prevented by getting defendants to plead guilty, where the attorneys appointed by the court or privately engaged, would often, for the sake of the fee, prolong a fight and take up the time of the court with a long drawn out trial."[1]

LEGAL AID

The other plan known as legal aid, devised to meet the failure of the administration of justice in connection with poor persons, came into being in New York in 1876. It is not a mere coincidence that in the preceding year New York had become a city of a million inhabitants. Rapid social and economic changes made the legal system developed under pioneer rural conditions work badly. A group of lawyers and laymen who were especially interested in German immigrants, realizing the frauds and impositions of which immigrants were the victims and which could be redressed only through legal action, appointed a committee to study the situation, and from the committee came the suggestion for an association to handle the problems.

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[1] RUBIN, The Public Defender an Aid to Criminal Justice in *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 346–364, November, 1927; DEFOREST, The Public Defender in Connecticut in *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 522–526, February, 1928; WOOD, The Public Defender in *The Review of Reviews*, vol. LXI pp. 303–307, March, 1920; BRADWAY, Notes on the Defender in Criminal Cases in *The Annals*, vol. CXXXVI, pp. 119–128, March, 1928; ORFILA, Public Defender in Police Courts in *The Annals*, vol. CXXXVI, pp. 146–151, March, 1928; GOLDMAN, "The Public Defender," 2d ed., G. P. Putnam's Sons, 1919.

An organization was formed and a salaried attorney employed to give a portion of his time to the work. At the end of ten years it had cared for 23,051 applications and had recovered $105,729 for its clients; more than half of these collections were for unpaid wages. During these years it was not a legal aid society in the modern meaning of that phrase. It was not designed to give legal assistance to all persons, but only to German immigrants. It was not supported by the public generally, but by the membership of the German society. The organization was destined, nevertheless, to be the prototype of most of the legal aid societies subsequently established.

In 1890 Arthur Von Briesen became president of the New York organization and for twenty-five years played the leading part in the development of legal aid not only in New York but throughout the country generally. With his appearance the work in New York was broadened to care not merely for the immigrant but for any man, who, because of his poverty, was in danger of a denial of justice. In spite of criticism and misunderstanding the society progressed steadily, weathered financial crises, and increased its reputation among the poor for its honesty and integrity in caring for the cases given into its care.

The idea, however, did not spread rapidly. It did not win the support of the bar. By the end of the nineteenth century it had taken root in only three cities—New York, Chicago and Jersey City. In 1899 only 10,424 cases were handled. The significant feature of this first period was the growth from a narrow type of work to a broad conception of general legal assistance to all deserving persons.

From 1900 to 1909 there was steady expansion. Boston took up the work in 1900, Philadelphia in 1902, Atlanta, Cleveland and Denver in 1904, Cincinnati in 1907, Pittsburgh in 1908 and Detroit in 1909. Of these new organizations, Boston, Philadelphia, Cleveland, Cincinnati and Pittsburgh were based on the New York type and were incorporated as private philanthropic societies. In Boston the bar took a leading part in organization. The Denver work was started by the local law school, and was so successful, and received so many cases that funds were insufficient for operation and it was forced to close. In 1905 the present strong Chicago Legal Aid Society was formed. New York in

1906 tried to start a criminal branch, but the work was discontinued because of lack of funds. This gave legal aid work a definite turn away from the criminal field as other organizations copied New York and limited their attention to civil work.

The third period from 1910 to 1913 was marked by growth in the Middle West and a strengthening in the East. The outstanding development was the establishment of the first municipal bureau in Kansas City in 1910. In 1912 St. Louis, Akron and St. Paul organized and were followed in 1913 by Duluth, Minneapolis and Louisville. In the East, Baltimore and Rochester were added in 1911. In 1912 societies were formed in Buffalo and Colorado Springs. In 1913 efforts to start work in the South resulted in progress in New Orleans and Birmingham. Furthermore, in 1913 the Harvard Legal Aid Bureau, conducted by students of the Harvard Law School, began, and a similar plan was started by the law school of the University of Minnesota. This period also saw the beginning of a national organization when the National Alliance of Legal Aid Societies was formed at New York in 1912.

During the fourth period from 1913 to 1917 there was rapid development which was checked only by the outbreak of the war. Territorial expansion reached the Pacific Coast where public defenders were established during the same years. The number of organizations increased from 28 to 41. The municipal type of bureau was copied in a number of cities.

With the outbreak of war in 1917 the development was brought to a standstill. No new societies or bureaus were formed and some of the weaker and more recently organized offices had to be given up.

A renewed impetus was given in the fall of 1919 when the Carnegie Foundation for the Advancement of Teaching published its bulletin entitled *Justice and the Poor*, which was really a treatise on legal aid. Its "main thesis was that legal aid work must be considered an integral part of the administration of justice in modern communities because unless legal assistance is provided for poor persons the inevitable result is substantial and widespread denial of justice."

In 1920 the Rhode Island Bar Association established a strong society in Providence. The society in Newark was reorganized under the direction of the bar. In Philadelphia the work of the private society was taken over and greatly enlarged by the municipal government. In 1921 the Grand Rapids Social Welfare Association opened a legal aid bureau. The same year a new plan for legal aid work, specially adapted to smaller cities, was developed by the Illinois Bar Association in cooperation with local bar associations. Up to this time legal aid organizations had been confined almost entirely to the larger cities. The Illinois plan indicated simple and inexpensive machinery for the carrying on of the work in the smaller cities and towns. In 1922 municipal aid bureaus were begun in Bridgeport and Camden and the Louisville society was reorganized at the instance of the local bar association.

In addition in 1922 the national meetings were resumed for the first time since 1916. From the records of the Philadelphia legal aid conveniton it appeared that thirty-six organizations had survived the war and that twelve new offices had been established or were being organized.

By 1925 the number of legal aid organizations had increased to seventy-two. In 1923 the work was established in Albany and Indianapolis and beginnings were made in widely scattered communities. Bar associations, social agencies and women's clubs have sponsored the creation of legal aid machinery.[1]

The public defender and legal aid are methods of mitigating criminal procedure for poor persons unable to employ the agencies of justice in normal ways or unfamiliar with the machinery of the courts. They are both makeshifts which do not aim at any real adaptation of the traditional instruments to modern needs. They perpetuate the sporting theory of justice and the idea of a game with the prosecution and defense lining up upon the two sides of the judicial gridiron or diamond. The game can be played more efficiently because the opposing groups more nearly correspond in strength and contending qualities. Undoubtedly the results of the legal system would be improved if both the public defender and legal aid could be made recognized parts of the machinery of justice, but after a considerable period of experimentation they remain largely confined to the urban centers. There is no prospect of their extension to the rural sections.

A preferable method would be to get rid of the whole contentions procedure and substitute for it a plan for the scientific determination of guilt. We have in the juvenile court and probation a model for a procedure which aims to investigate the fact of guilt and the reasons therefor. The probation officer approaches the problem in an impartial and scientific manner. He can do everything that the defender or legal aid counsel can do; he can see that the poor person has suitable defense; he can make recommendations to the judge; he knows the environment from which the offender comes, and he knows what course of action will help him to make good if sentence is suspended. The role of the probation officer is already more widely known than that of the defender and the legal aid bureau. There is no conflict, but one tries to modify the severity of the law, while the other undertakes to introduce a new principle.[2]

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[1] SMITH and BRADWAY, Growth of Legal Aid Work in the United States in the *Bulletin of the U. S. Bureau of Statistics*, miscellaneous series, 398, pp. 61–67, January, 1926; MAGUIRE, "The Lance of Justice," Harvard University Press, 1926.

[2] SUTHERLAND, "Criminology," pp. 269–270, J. B. Lippincott Company, 1924.

CRIMINAL JUSTICE IN CLEVELAND

More recently as a result of the agitation in regard to the increase of crime since the end of the war, a more fundamental approach to the reform of criminal procedure has developed. Dean Pound has pointed uot that "our whole system of criminal justice, devised for rural, pioneer, agricultural America needs to be studied functionally with reference to the needs of urban, industrial America of today." Hysterical crusades without any scientific study of the facts are likely to result in changes that will have unexpected outcomes. Instead of improving the present situation they may actually make it worse. Long continued research is necessary before any really fruitful reforms can be made. Legislation, judicial organization and administration, and their interrelationships, must be carefully studied. No one person nor group is equal to the solution for the whole country.

The outstanding effort to do what Dean Pound has outlined was the "Cleveland Survey of Criminal Justice," directed by Dean Pound and Professor Felix Frankfurter, and published in 1922 in a volume of 700 pages. The survey grew out of conditions that developed in the city of Cleveland, a typical example of the huge urban areas which are the result of rapid industrial progress in the United States.

An outbreak of urban brigandage during the fall and winter of 1920 to 1921, accompanied by a seeming breakdown of law enforcement, led the Cleveland Bar Association and other civic bodies to request that a survey of the situation be undertaken. Cleveland had done as well as other American cities in its attempts to fit its rural judicial organization into complex urban life. Under Tom L. Johnson following 1900 some reforms had been made, but during the war familiar evils returned. Crooked lawyers started into business again, and Cleveland became known as an "easy town." Agitation, precipitated by sensational cases and crime waves, accomplished nothing. As a result the survey was made.

The survey revealed conditions that may be found in any American city, for courts and penal systems depend upon the qualities of the men who operate them—the policeman on his beat, the municipal and county judges, prosecutors, lawyers, reporters, jailers and probation officers.

All the judges were above suspicion of corruption, but were the victims of "influence" and "good fellowism." One judge of the police court won local fame by his $1,000 fines for liquor law violations. Men who could not pay the fine were sent to the workhouse to serve it out at sixty cents a day. A few weeks later this judge was quietly reducing the fines and suspending the sentences. Another judge told a reporter that he did not care what was said about him, if only his name was kept before the public.

The prosecutor matches his skill and the inexperience of his assistants, some just out of law school, against the specialist in criminal law. Almost complete lack of preparation is opposed to those who have been working for weeks. The county prosecutor depends largely upon the evidence furnished by the police.

Two other figures are influential—the lawyer and the reporter. Political pull is shrewdly used by the lawyers who are familiar with local politics. The reporter exercises a considerable effect upon the course of justice. At every sensational trial "human interest" and "sob" stories are published that create public feeling on one side or the other.

The results of such a system of criminal justice, administered under the conditions described, were found to be as follows:

> Of 1,000 individuals arrested on felony charges in a typical year but 118 actually come to trial. Of the remainder 127 were disposed of by the police, 85 were "nolled" or "no-papered" by the police prosecutor, 143 were discharged or dismissed or found guilty of a misdemeanor in municipal court, 139 were "no-billed" by the grand jury, 107 were "nolled" by the county prosecutor, 91 made an original plea of guilty, 148 changed the plea to guilty and 42 were variously disposed of.
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> By no means should it be supposed that all those were guilty who were released. But witness the Record of Richard Roe, who, in 1911, was paroled by the judge after conviction for robbery. The same year after trial for attempted burglary he was discharged but turned over to the reformatory for violation of his parole. Charged with burglary and larceny a short time later he pleaded guilty of petty larceny. The same year, up for assault to rob, he was paroled by the judge. In 1916 a grand jury brought in no bill on the charge of assault to rob. The same year he was found not guilty of burglary. Arrested twice for intoxication he received a suspended sentence one time and thirty days the next. Finally in 1916, he was arrested for burglary and the case was nolled. In 1919 he was in court on a fifth charge of burglary, was allowed to plead guilty to petty larceny, and was fined. On a robbery charge a few months later he was found not guilty. Once more he was captured for burglary and once more he pleaded guilty to petty larceny. Later he was fined $25 for being a "suspicious person."

During the survey this man, known to the police as a professional crook, was still hanging around the poolrooms.

"Nolle prosequi," literally, "I do not prosecute," is the decision of the prosecutor that the evidence in the case does not warrant carrying it to trial. It is a rural survival, designed to prevent needless trials. The prosecutor gives no reason for his action nor does he record them.

Susceptible of like abuse is the plea of guilty of lesser offense. The story is told of a pickpocket with a record of nine arrests under five aliases who was arrested for the tenth time on the old charge. The book entries of the offense were altered to "petty larceny," and he was convicted of the lesser act. The possibility of such happenings led one prosecutor to keep his assistants ignorant of the cases they were to handle until a few minutes before trial.

Motions for new trial offer the convicted man another loophole—not because he gets a new trial but because he does not. Forty-one new trials were granted in one year, but only two cases actually came to trial. The defendants in the thirty-nine cases pleaded guilty to lesser charges; they were paroled or their cases were dropped.

The abuse of bail bonds gives the criminal a chance to get out of town, or to continue the case until the prosecuting witnesses drop it. In complaining, however, of the low bail required of repeaters, the public has been missing the real evil. This is not so much the matter of easy bail as the practice of the professional bondsmen in exploiting the poor and using every means to delay the administration of justice.

In general, the survey made plain the inefficiency which arises from the lack of an executive head of the county court system, an enterprise costing the taxpayers nearly $400,000 a year. Its offices spread through three buildings, its records two; its policies are as various as the twelve judges who made them. This is the business side of justice in a city where industrial enterprises have won reputation for smooth, effective operation.

Meanwhile, if Ali Baba had had the forty thieves arrested in Cleveland, twenty-eight would have gone free, twelve would have been sentenced, but only six would have gone to the pen.[1]

The Missouri Crime Survey

A second survey, the "Missouri Crime Survey," published in 1926, covers the entire state. It originated as did the Cleveland survey from agitation as to the large amount of crime not only in the two large cities of the state but in the rural sections as well. In 1923 the president of the St. Louis Bar Association called attention to the problem of crime and suggested a survey of the criminal laws and their administration by experts of recognized reputation and experience. Later in 1925 there was formed The Missouri Association for Criminal Justice with a board of directors chosen, ten from St. Louis, ten from Kansas City and ten from interior Missouri. Subsequently, a campaign for funds was organized which yielded approximately $65,000.

The survey began early in 1925 with Arthur V. Lashly as director and A. F. Kuhlman of the University of Missouri as assistant director. Dr. Raymond Moley was engaged as consultant and editor. Twenty-eight field men were employed in the conduct of the survey. They were largely practicing lawyers and recent graduates of the law schools of Washington and St. Louis universities and of the State University at

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[1] Love, Justice in the Stocks in *The Survey*, vol. XLVII, pp. 135–145, Oct. 29. 1921.

Columbia. These men went to the criminal records in the various counties and compiled data concerning all felony cases over a two-year period from October 1, 1922, to October 1, 1924. The record of each case was copied and first-hand information was secured concerning the operation of the offices from clerks, sheriffs, prosecuting attorneys, coroners and justices of the peace. Questionnaires were also sent to various officials.

When the various reports were completed, they were submitted to advisory committees, revised by their authors, and edited by Dr. Moley before submission to the board of directors and survey committee. When finally approved they were released to the public at meetings arranged to accomplish the purpose of the survey: (1) an exact determination and publication of the facts concerning the administration of criminal justice; and (2) the development of statewide interest in the needs which must be understood before improvement can be expected.

The conclusions reached in the various reports of the survey have, in many instances, an interest of a general character. A statistical determination of how many cases disappear at various stages along the process of administering justice is very significant. The study of the mortality of cases shows a remarkable contrast between cases begun and punishments decreed, and a still more startling contrast between crimes committed and punishment administered. Robbery is almost always committed by habitual criminals and is always attended with grave danger to human life. The ratio of robberies committed to punishments therefor, in St. Louis, was, in one year, 25 to 1; in Kansas City, 28 to 1. For burglaries the ratios for the two cities were 25 to 1 and 118 to 1. These figures indicate that the practice of a criminal profession is not especially hazardous.

Out of 10,540 felony cases, careful estimates showed that of every 100 who commit felonies, 81 escape arrest. The great share of the prosecuting attorney and judge appears from the fact that these two officials are responsible for 21 and 10 per cent, respectively, of the eliminations of criminal prosecutions. Of all the cases which are sentenced, 50 per cent take 50 days or more. The comparatively small part played by the petit and the grand juries is shown by the fact that only about 12 per cent of the cases were tried by juries. Of all who were sentenced, 80 per cent were sentenced on pleas of guilty; less than 20 per cent of those sentenced are convicted by juries.

It is a common belief that our criminal procedure functions far more efficiently in the country than in the city. Out of this assumption has grown the theory that our criminal machinery fashioned under rural conditions is unsuited to large cities. A state more satisfactory than Missouri in which to test this theory could not be selected. There are three populous cities, St. Louis, Kansas City and St. Joseph; there are sparsely settled agricultural, grazing and stock raising counties. A great variety of economic, industrial and racial conditions is comprised in the state.

The survey showed that the criminal machinery functions no more efficiently in the country than in the city, and with indifferent success in both. About the same number of cases was handled in the three cities as in interior Missouri. The number actually punished differed only slightly—34 per cent in the country and 29 per cent in the cities. A comparison of St. Louis and the state outside the three cities gives 42 per cent punished in the city and 34 per cent in the country. These results raise a question as to the adequacy of the theory referred to as an explanation of the shortcomings of criminal justice in America, even though it is supported by such an authority as Dean Pound.

> A careful study of the qualifications and characteristics of the prosecutors in Missouri indicates they that are in the main young men from twenty-five to twenty-nine years of age. Their experience in law before election was from one to four years. One-half of the prosecutors serve only one term of two years and a very few six years. These officials are young and inexperienced in the law and new in their jobs as prosecutors. Their opponents in the trial of cases are generally veterans of criminal practice. The state thus is represented by youth and inexperience, the criminal by age, skill and experience.

The responsibility of the prosecutor for the initiation of the process of law enforcement adds to the significance of these facts.

The study of the sheriff's office showed that additional police protection for rural districts is greatly needed. The sheriffs favored a state police department and would welcome relief from a duty which they are neither equipped nor empowered by law to perform effectively. The abolition of the coroner's office was shown to be ultimately desirable.

General conclusions from the survey demonstrated . . .

> That the machinery of justice is too cumbersome; that there is too little co-ordination and co-operation among the various agencies working to the same end; that there are too many laws standing in the way of the prosecution and conviction of persons guilty of crime; that there is too much lost motion and unnecessary expense in procedure; that there is laxity in prosecutions; and that there is altogether too much leniency exhibited in the granting of pardons, paroles and commutations.

A considerable number of recommendations points to a more summary and effective administration of justice, but those responsible recognize that "certainty and severity of punishment are not the only corrective elements needed to meet the problem of crime." They advocate the most modern methods of science in the determination of responsibility for crime, and, in the administration of parole and pardons, they do not aim "to destroy the effect, but rather to restrict them to a scope where they can be really effective."[1]

THE NATIONAL CRIME COMMISSION

The national crime commission grew out of the studies of post-war crime conducted by Richard Washburn Child, former ambassador to Italy, whose findings were published in the *Saturday Evening Post.* He was assisted by Mark O. Prentiss whose outspoken comments on Mussolini led some of the Fascist leaders to retort that the United States had more crimes of violence than were committed in Italy even when a revolution was in progress. These writers believed that the chief factor in the increase of crime was unquestionably the lack of law enforcement. All that is necessary is to send criminals to prison for long sentences.

In August, 1925, a group of leaders in American business and politics gathered in the offices of the United States Steel Corporation, and decided, after listening to speeches by Mr. Child and Mr. Prentiss, that something had to be done. As a result the National Crime Commission was organized. From this meeting, at which Judge Gary presided, grew also the New York State Crime Commission and the agitation which was directly responsible for the Baumes laws, whose stringent provisions are intended to send habitual criminals to prison for life.

The practical work of the commission is in the hands of an executive committee which consists, among others, of such men as Newton D. Baker, Charles E. Hughes, Frank O. Lowden, Franklin D. Roosevelt and Chester H. Rowell. Each member has taken over the chairmanship of a subcommittee. Together these subcommittees cover the whole field of crime. Mr. Lowden's committee has issued several very valuable reports prepared by the secretary of the committee, Dr. Louis N. Robinson.

Working quietly the commission has managed to collect a very considerable body of useful information. It has certainly not abolished crime, and it does not pretend to have made a beginning with the practical side. It is cooperating with some twenty state and municipal commissions or legal associations whose objects are similar to its own.

In November, 1927, the commission assembled a conference at Washington, which lasted for two days. There were represented at the meetings twenty-six commissions and over fifty additional important organizations. Many of the latter had been at work for years. Mr. Baker, at the closing session, made some significant remarks. He declared that the function of the commission had "very decidedly changed from that to which it set itself when it started. I don't know just what anybody else thought at the time, but my own first impulse was that the nine or ten of us who met in New York would soon solve the crime problem and dispose of the whole matter. Our function has changed, our point of view has changed. We realize that the real work of the Crime Commission is going to be done in the state commissions and in the local commissions." Mr. Baker concluded by stating that the National Crime Commission's work would best be done by stimulating, supporting and aiding these organizations.

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[1] Adapted from The Administration of Criminal Justice in Missouri, a summary of the Missouri Crime Survey published by the Missouri Association for Criminal Justice, 1926; "The Missouri Crime Survey," The Macmillan Company, 1926.

The change in attitude described by Mr. Baker contrasts with the object of the movement as indicated by Mr. Prentiss when he spoke of it as an "uprising of organized business against organized crime to prevent the loss of $10,000,000,000 and 12,000 lives within the next twelve months." Such an alarm could only be sounded by persons familiar with the obvious. None of the advocates of such activities represented any of the scientific groups engaged in the study of crime and its treatment. Fortunately the crime commission seems to have definitely turned to the accumulation of information in regard to crime and criminal administration. If it continues to approach its task with regard for scientific fact and with a real recognition of social values, it may yet make a profound contribution to the modernization of the criminal codes and procedures of the present day. There is a crying need for reform based upon a wholly new and rational approach to the whole problem of crime.[1]

Baumes Laws

One result of the early mood of the National Crime Commission was the creation in the state of New York of a crime commission "to examine the crime situation, the administration of criminal justice in criminal cases and punishment for crime." Senator Caleb H. Baumes became chairman of the new commission. He had been eighteen years in the state senate. No study of the causes of crime was made, for Senator Baumes, as a keen student of the Bible, regarded the Ten Commandments as a sufficient basis for criminal law and procedure.

Twenty-four bills were formulated and public hearings held. The bills were quickly passed by substantial majorities and the governor signed all but two of the bills. A few became effective immediately, but most of them did not go into effect until July 1, 1926.

The new laws were aimed against the use of firearms, without which crimes of violence are almost impossible, and against the habitual criminal. The offender who employs weapons gets unusually severe treatment—the sentence being added to by reason of their use. These provisions, with another which imposes life imprisonment for a fourth felony regardless of the nature of the felonies, were intended to deal with the great amount of highway robbery. The most revolutionary change in procedure was in the imposition of life imprisonment upon felons in other than murder charges. The law is mandatory and executive clemency is the only remedy for dealing with exceptional cases. No other state has ever enacted such drastic legislation.

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[1] Cass, National Crime Commission Conference in the *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 497–513; *The Independent*, vol. CXVII, pp. 436–438, Oct. 16, 1926; "The American Year Book, 1926," pp. 622–624.

Journalistic accounts of the effect of these laws describe them as causing "a panic in crookdom." When the laws were about to go into effect there was "a frantic rush on the part of the underworld to plead guilty and to break into Sing Sing prison before the new laws became operative. What was known as the 'bum's rush' to prison probably afforded a spectacle never before had in this country," and was explained by the commission as due to the fact that the new laws were so much more stringent.

The Baumes laws depend upon severity chiefly as a deterrent to crime. Those who have faith in such measures will naturally be optimistic as to their effectiveness. Judges, prosecutors and prison officials will be apt to interpret any apparent changes in the number of offenders as due to the influence of these laws. A considerable period of time must elapse before any definite conclusion can be drawn. The solution of the crime problem is not so simple as those who believe in the passage of a few severe laws as a remedy seem to think. So far, information regarding the Baumes laws as deterrents to crime is insufficient to warrant similar legislation in other states.[1]

The recent more thoroughgoing study of the crime problem with special reference to the criminal law and procedure has not yet been in action for a decade. In 1921 the American Bar Association appointed a special committee on law enforcement. The report submitted in 1922 made such startling disclosures that the committee was continued and made a supplementary report in 1923. Since 1923 the association has had a permanent section on criminal law.

In 1923 the American Law Institute was organized in Washington at a meeting of judges, lawyers, and law-school teachers. Elihu Root is honorary president and William Draper Lewis is director. On the council are legal celebrities such as Benjamin Cardozo and Charles Evans Hughes. The initial meeting brought together representatives from a majority of the highest courts. The institute has the indorsement and support of the Carnegie Corporation and of the Laura Spelman

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[1] McLellan, A Panic in Crookdom in *The American Review of Reviews*, vol. LXXV, pp. 155–163, February, 1927; *Report of the Crime Commission of the State of New York*, pp. 8–23, 1927.

Rockefeller memorial. The two tasks at which it is working are: (1) the restatement of parts of the common law and the formulation of a new criminal code; (2) the bringing up to date of the antiquated system of American criminal procedure. The code will require a number of years, and, after its completion, it must be submitted to the legislatures of the states to be incorporated into their individual systems of criminal procedure.[1]

It can hardly be expected that very much progress could have been made in the reform of criminal procedure in so short a time. The work of the Bar Associations, the Cleveland and Missouri Surveys, and the activity of the National Crime Commission originated in the five-year period from 1921 to 1926. Some of the newly aroused interest spent itself in the passage of the Baumes laws and similar measures based upon the mistaken view that stricter enforcement and severer laws were all that were needed to solve the crime problem and to destroy the "crime wave."

There is still altogether too much popular belief in deterrence—too much reliance upon the dictum of the English judge who told the man sentenced to be hanged: "I hang you not for stealing a horse, but that horses may not be stolen."

Impatience with the slow processes of the law leads too frequently to the advocacy of extra-legal measures to accomplish what is euphemistically called justice. Commenting upon the difficulty of convicting gangsters caught in a gun fight, in which two policemen were killed, *The Chicago Tribune*, in an editorial published in October, 1925, urged upon the authorities what was described by the writer as Try Treating Them Rough. A part of the editorial read as follows:

> In the Philippine war the American troops had trouble with wire cutters who would break the line of communication soon after it was stretched. Only apparently friendly natives were about and the soldiers couldn't find the cutters. It was made a rule that whenever a wire was cut the nearest house was burned. If it was cut again the village was burned. That stopped the cutting. Every householder was guarding the wires.
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> William Hale Thompson, when mayor, got mad because pickpockets were frisking the visitors at the Pageant of Progress on the Municipal pier. He told his chief of police that he wanted it stopped. The chief sent the police to take all the known pickpockets on the pier. They were not taken into court where their attorneys could help them and send them back to work. They were taken under the pier and whaled. They didn't come back.
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> The chief of police could take a hint from his predecessor. The men who are threatening to murder or trying to murder police witnesses in this murder case could be taken in charge and given a ride. They could be turned loose after the police had handled them and told them that the ride would be repeated if there

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[1] "The American Year Book, 1926," pp. 624–625; Strout, Rewriting American Law, *The Independent*, vol. CXIX, pp. 81–82, July 23, 1927.

was another attempt made against witnesses or any other attempt to interfere with the trial. It would work.

Such short-sighted remedies will never bring about worth-while results. They present insurmountable obstacles to any real and lasting improvements. They can only be overcome by a calm and sure reliance upon a scientific approach to the complex of problems which we include in what we loosely and indiscriminately call the "crime situation." Even in the reform of criminal law and procedure the attempt must come from a variety of angles. We are dealing not only with legal but also with social relations. Law is not only a legal science, it is a social science as well. As Dean Pound has so well said:

> If we want to improve the administration of criminal justice in this country, we must begin at the beginning and study the subject thoroughly. A recrudescence of the methods of Stuart England can only bring about another reaction. In the meantime the public, whose eye is chiefly upon the criminal law, will treat the whole subject of the administration of justice as a unit, and presently the steam-roller of legislation and constitutional amendment will flatten out the good and the bad. This may be avoided, but the way to avoid it is not to decry all agitation, but to substitute an intelligent agitation based upon thoroughgoing study of the situation.[1]

Review Questions

1. What are the two sources from which existing legal systems are derived?
2. Compare the two systems and indicate the extent of their use.
3. What is meant by criminal procedure and what are the two principal types?
4. Describe the chief characteristics of both types and the sources from which they were derived.
5. Give examples of the two types and explain the relation of American criminal procedure to them.
6. What is necessary to an understanding of the administration of criminal justice in American cities?
7. What influences affected the development of American criminal law during the nineteenth century?
8. What has happened to criminal law during the last generation?
9. State briefly the story of Galsworthy's "Justice."
10. How is the English legal system described?
11. Compare it with the legal system in the United States.
12. State the story of the case knives and the pickaxes. What aspect of the law does it illustrate?
13. What is Dean Pound's remedy for the failure of the courts?
14. Why is there denial of justice to poor people?
15. Describe the case of the Italian.
16. Outline the organization of the courts as typical of state jurisdictions.
17. Describe the procedure in criminal prosecutions.

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[1] *Annual Report of the Dean of the Harvard Law School*, 1925, printed in the *Boston Herald*, March 30, 1925; Pound, What Can Law Schools Do for Criminal Justice in *The Iowa Law Review*, vol. XII, pp. 105–113, February, 1927.

18. What is the importance of the expense of counsel?

19. Why does the prosecuting attorney fail as a judicial officer?

20. What is the place of the public defender in the administration of justice?

21. What results have been accomplished by public defenders?

22. What is meant by legal aid? Describe the development down to the present time.

23. What are some criticisms of the public defender and legal aid?

24. How did the Cleveland Survey of Criminal Justice happen to be made and what conditions were discovered?

25. Describe the Missouri Crime Survey and indicate some of the conclusions.

26. Explain the origin of the National Crime Commission.

27. What change in attitude has been shown by the Commission in the course of its activity?

28. What are the Baumes laws and what is their chief characteristic?

29. What two tasks have been undertaken by the American Law Institute?

30. What is the fundamental objection to the advocacy of extra-legal measures to obtain justice?

Topics for Investigation

1. Trace the origin of criminal law and procedure. See Parmelee, "Criminology," Chaps. XVI–XVII.

2. What is the "sporting theory of justice"? See Sutherland, "Criminology," pp. 257–258.

3. What is meant by "popular justice"? See Sutherland, "Criminology," Chap. XI.

4. What is "the Great American Game"? See Perkins, *Harpers Magazine*, pp. 750–758, November, 1927.

5. Discuss the nature of the judicial process. See Cardozo, "The Nature of the Judicial Process."

6. Describe the actual disposition of criminal cases. See Moley, "Politics and Criminal Prosecution," pp. 36–64.

7. What provisions are made in the various states in regard to indictments? See Moley, "Politics and Criminal Prosecution," pp. 133–134.

8. Describe some absurdities in criminal procedure. See Perkins in *Iowa Law Review*, pp. 297–335, June, 1926.

9. Study the work of the Survey of Criminal Justice in Cleveland. See *The Survey*, Oct. 29, 1921 and Nov. 26, 1921.

10. Study the work of the Missouri Crime Survey. See *A Summary of the Missouri Crime Survey*, issued by the Missouri Association of Criminal Justice in pamphlet form in 1926.

11. Study crime and the courts in Georgia. See the *Journal of Criminal Law and Criminology*, pp. 169–218, August, 1925.

12. Describe the working of the bail system in Chicago. See Beeley, "The Bail System in Chicago."

13. Discuss the public defender. See Goldman, "The Public Defender" and Sutherland, "Criminology," pp. 269–270.

14. Study the development of legal aid. See Maguire, "The Lance of Justice."

15. Discuss the election of judges. See Beman, "Election versus Appointment of Judges."

16. Discuss the relation of public opinion to the administration of justice. See Graves, "Readings in Public Opinion," pp. 1059–1103.

17. Study the Baumes laws in New York. See Brasol, "The Elements of Crime," pp. 378–380, and Moley, "Politics and Criminal Prosecution," pp. 170–176.

18. Discuss the judicial system and methods for its improvement. See Bruce, "The American Judge."

Selected References

1. Sutherland: "Criminology," Chaps. X–XII.
2. Gillin: "Criminology and Penology," Chap. XXXI.
3. Parmelee: "Criminology," Chaps. XVI, XVII.
4. Barnes: "The Repression of Crime," Chap. IX.
5. Goldman: "The Public Defender," Chaps. I–IV, VIII.
6. Callender: "American Courts, Their Organization and Procedure."
7. Cardozo: "The Nature of the Judicial Process."
8. Pound: "The Spirit of the Common Law."
9. Bruce: "The American Judge."
10. Kingston: "Famous Judges and Famous Trials."
11. Irving: "The Life of Judge Jeffreys," Chaps. XIV–XV.
12. Train: "The Prisoner at the Bar."
13. Wells: "The Man in Court."
14. Wellman: "Gentlemen of the Jury."
15. Münsterberg: "On the Witness Stand."
16. Moley: "Politics and Criminal Prosecution."
17. Moley: "Our Criminal Courts."
18. "Criminal Justice in Cleveland," Criminal Justice and the American City, Part VII, pp. 559–652.
19. *The Missouri Crime Survey.*
20. Graves: "Readings in Public Opinion," Chap. XXX.
21. *The Illinois Crime Survey.*
22. Sayre: "A Selection of Cases on Criminal Law."

CHAPTER VII

JUVENILE OFFENDERS

Juvenile offenders have probably always been treated somewhat differently from adults. Their dependence upon their parents and their subjection to parental control have given them a peculiar legal status. Their immaturity and lack of knowledge have made it impossible to hold them strictly accountable for their acts. They may commit the overt act, but they cannot have the culpable intent, since they do not know what wrong is. The tendency has been, during the last century, to assume that criminals under a certain age, usually sixteen, have committed their crimes without full realization of the consequences, or at least to admit proof of such assumption on the ground of youth. Unfortunately, it still happens frequently that children are arrested, held in jail, tried and punished in the same way as adults.

During the nineteenth century there was the gradual removal of youthful delinquents from association with adult offenders, and their treatment from an educational and reformatory point of view. Institutional care was the original method used. The first institutions were established in New York, Philadelphia and Boston from 1825 to 1828. They were known as houses of refuge or reformation. The first state institution in the country was the Lyman School for Boys opened in 1847 in Massachusetts. By the end of 1850 there were only eight reformatories in the United States. There are now more than 150 juvenile reformatories of which the majority are state institutions.

The early establishments were juvenile prisons. Gradually the prison features have been dropped. The Ohio Reform School, in 1854, was the first to break away from the prison plan and to introduce the cottage system. In 1898 there were thirteen "walled" and thirty "open" institutions. The changes in the names used to designate the institutions from houses of refuge to reform or industrial schools, and finally, to training schools is significant of the general trend.[1] More and more the problem has been recognized as primarily one of education.

For many years the juvenile reformatory was the only method for dealing with children who manifested any behavior difficulties, whether serious or trivial. Since 1900 the juvenile court and probation have made it the resort used after other methods have failed.

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[1] The name "reform school" was first used in Iowa. In 1884 the name "industrial school" was adopted and in 1917 it was changed to "training school." See Aurner, "History of Education in Iowa," vol. V, Part IV, State Historical Society, Iowa City, Iowa, 1920.

The Juvenile Court

The juvenile court is one of the great contributions of the past twenty-five years to modern criminology. The first court was established in Illinois in 1899. Almost at the same time Judge Ben Lindsey organized a similar court in Denver. He spread the idea widely by his lectures and other activities. The Chicago court has been the model for much of the legislation in other states, while Judge Lindsey's personality and his interest and sympathy with modern youth have made him the embodiment of the ideals of the court for more than a quarter of a century.

The most advanced states did not lead. Massachusetts had had separate trials for children and probation for twenty years. The Illinois law was the result of ten years of agitation against bad conditions. After 1899 the juvenile court and probation spread rapidly until at the present time all the states have some features. In actual practice the juvenile court and probation have developed mainly in the large cities. The great need is the extension of its machinery and point of view to the rural sections.

Juvenile court procedure at its best provides for individual and private treatment. "Children cannot be handled in job lots, but as individual packages only." Scientific study of the individual delinquent was carried on by Dr. William Healy in Chicago from 1909 to 1917, and he has continued the work in Boston since 1917. Contributory delinquency laws originated with Judge Lindsey and have been widely copied. They make it possible to deal effectively with neglectful parents, incompetent and unfaithful guardians and other adults responsible for juvenile delinquency. "Unofficial probation" makes it possible to deal with cases of children without formal action of the court. Provision for a separate detention home and school is made in connection with the best juvenile courts in the larger cities. Juvenile courts have become a sort of "department for maladjusted children," supplementing the school in preventing juvenile delinquency. Many delinquents might have been kept normal had the community assumed responsibility earlier.

The great contribution of the juvenile court has been the socialization of the procedure for dealing with maladjusted individuals. In place of the sporting theory of justice in the ordinary criminal court, there is the hearing characterized by scientific methods of investigation. Instead of two partisan groups in conflict, there is elaborate machinery for securing information, upon the basis of which a decision is made. Protection and guardianship rather than punishment are the objectives. It is an experiment in methods and procedure. Gradually the results will be recognized and the distinction between the juvenile and other courts will disappear.

What may happen to juvenile offenders in great cities is shown in the following stories:

THE CASE OF TWO BROTHERS

Our whole system of dealing with the youthful criminal is wrong. He is arrested and thrown into a cell at a police station, often with habitual criminals; then he is brought before a judge who knows nothing about him except the evidence that is brought out at the preliminary hearing, and if this is convincing, he is held to the grand jury. In the meantime he is confined in the county jail, where he frequently remains from three weeks to three months before he is brought to trial.

How such a situation works out is made plain in the case of two brothers, one of whom lived at home in the southern part of Chicago and worked long hours in a steel mill. The other was a janitor and lived away from home, returning only occasionally to see his family. The brother who lived at home kept some pigeons on the top of the house. These birds were not only a great delight to their owner but also were becoming a source of revenue.

A saloon keeper in the neighborhood, who also kept pigeons, found one day that some of them had disappeared and hastily concluded that the young pigeon fancier had stolen them. He made a specific charge to the policeman on that beat who went to the house and, without a search warrant, overhauled the dovecote where he claimed he found some pigeons with the mark which the saloon keeper described as his. The officer, again without a warrant, arrested the brother who lived away, and who had just come home to see his mother.

The next day the officer went to the steel mill and arrested the brother who owned the pigeons. In spite of the persistent denials of both boys, they were taken to the police station and charged with burglary. At the preliminary hearing the boys were held to the grand jury and sent to the county jail to await trial. The grand jury found a true bill against them. They were unable to furnish bonds, which were placed at $1,000 each, and were therefore confined for six weeks in jail until their case came up in court.

When their trial was finally held, the officer tried to bring out stories of previous misconduct. He was unable to prove his charges and the judge refused to admit them as testimony. It was obvious that the entire evidence was insufficient and the boys were found not guilty and discharged.

It would be difficult to describe the state of mind of these two honest, hard-working boys; they felt both disgraced and defiant and were smarting under a keen sense of injustice.[1]

THE CHILD AND THE ELECTRIC CHAIR

A boy sixteen years, three and one-half months old was sentenced to die in the electric chair in New York. He had been legally convicted of murder in the first degree. He came from good parents, had never been convicted of crime before and did not intend up to the moment of the act to commit this one. His name is Paul Chapman.

It is perfectly possible in New York to electrocute a child of seven years. This can be done in other states as well. In New York children under seven are declared "not capable of committing crime." A child between seven and twelve is "presumed" to be incapable of crime, but "*the presumption may be removed by proof that he had sufficient capacity to understand the act or neglect charged against him and to know its wrongfulness.*" Since the only penalty for murder in the first degree is death, a child between seven and twelve who commits such a murder, and who can be proved to have sufficient capacity to "understand the act" and to "know its wrongfulness" can be electrocuted.

A protection is thrown around children who commit lesser offenses by the juvenile delinquency act, but this act specifically excepts crimes punishable by death or life imprisonment from its protection.

The offense of which Chapman was convicted was not the one he started out to commit. With a nineteen-year-old boy named Davis and that boy's brother, he went to an apartment house in Brooklyn for the purpose of committing burglary.

When the trio arrived at the house, Davis stationed his brother in the street as a watcher and took Chapman with him into the yard at the rear of the house. Chapman waited while David reconnoitered. Upon investigation it was found that there were more persons in the apartment than they had expected. After some discussion with Chapman, Davis undertook to chloroform the occupants. Some movement alarmed the burglars, and, in attempting to escape, they aroused the people in the house. Chapman succeeded in making his escape but was arrested the next morning as he returned to his home. He did not know that anyone had been shot or hurt. The defense maintained that all the deaths, which included two men and a woman, occurred after Chapman fled. Davis was shot to death by the police. The prosecution claimed that Chapman was active in planning and carrying out the crime. The evidence seems to have been conflicting in some respects.

"Murder in the first degree, under the New York law, is committed whenever, in the attempt to commit a felony, a person kills another person, whether the killing be intentional or not. Chapman was undoubtedly present and participated with Davis in the attempt to commit a felony."

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[1] Adapted from Bowen, "Safeguards for City Youth at Work and Play," pp. 115–118, The Macmillan Company, 1915.

Chapman was born in Chicago of good parentage. His father died of tuberculosis when he was three years old. This left the mother with two children, Paul and a brother five years older, to support. The family moved to Brooklyn where the mother secured work. The $5,000 in life insurance, left by the father, was gradually used up.

Paul attended school in Brooklyn from 1908 to October, 1916, his progress being regular. At the trial his teachers testified as to his good deportment and standing. From 1910 to 1915 he was choir boy in two churches. Change of voice compelled him to leave. He was described at the trial as far above the average in courtesy and conduct.

About this time his mother married again. The stepfather was kind and Paul did not complain. His brother also died from tuberculosis in the fall of 1916. The boy became restless and left home with his mother's approval in December, 1916. He worked in various places in Connecticut, Pennsylvania, New Jersey and Maryland and returned home in October, 1917.

While away he wrote home frequently and sent his mother $5 on her birthday. He wrote her not to send him money, saying he did not need it. Homesickness caused his return. During this absence it was claimed that he became a "bad" boy.

While looking for work, after his return, he again met Davis, whom he had known at school, and who was the originator of the enterprise that proved his undoing. Chapman's entry was undoubtedly the desire to secure some money, as he had returned without money, and with his clothes ragged, only two weeks before the murder.

The sentence served to attract public attention to the fact that under the laws of New York and of some other states, children may be executed for murder. Through the intervention of persons interested, Chapman's sentence was commuted to life imprisonment.[1]

In recent years I have gathered from the newspapers the following cases: In Maine a fifteen-year-old boy was sentenced to life imprisonment; in Ohio a sixteen-year-old boy was executed and in Arkansas another sixteen-year-old boy was executed; in Nebraska a nineteen-year-old boy was sentenced to death and commutation to life imprisonment was only obtained after a long struggle; in Florida a boy of nineteen was electrocuted.

The *Outlook* in an article early in 1929 gives a list of Youthful Killers which includes William Hickman, eighteen years old, the murderer of Marion Parker aged twelve; George Harsh and Richard Gallogly, students at Oglethorpe University, nineteen and eighteen years old, engaged in a series of robberies apparently for the thrill of the adventure, as both boys came from wealthy families; in one of the robberies a man was killed. Harrison Noel, a New Jersey lawyer's son murdered a little girl and the Negro chauffeur of a taxicab; Frank McDowell, twenty, burned his two sisters to death and a year later killed his father and mother, but a Florida jury decided that he was counterfeiting insanity when he explained that the deeds were a penance for blasphemy; Vincent Rice, seventeen, killed his "girl friend," fifteen years old and could give no explanation for his crime except that they had quarrelled. The miserable list might be continued almost indefinitely. These youthful murderers came from good families; many of them were college students; in some cases their parents had reared their children conscientiously and carefully.[1]

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[1] Quoted in part from Lane, *The Survey*, vol. XXXIX, pp. 673–675, Mar. 23, 1918; vol. XLIII, p. 319, Dec. 27, 1919; p. 603, Feb. 21, 1920.

What is the solution of the problem? Not capital punishment which prevents a scientific and effective solution. The hanging of Hickman had no effect as a deterrent to similar crimes in the future. He was exterminated without society learning the cause of his crime. The old routines have accomplished nothing. Harsh and Gallogly were committing their crimes when Hickman was buried. "Human conduct is caused. Ordering and forbidding cannot change it. In order to modify behavior one must understand it and deal comprehendingly with the human beings who experience it." For centuries courts and officials have opposed crime and delinquency by force. It is doubtful if they have lessened at all the number of criminals. Some new method of approach must be followed. Surely we might wisely begin with youthful delinquents. There is no excuse for our treatment of juvenile offenders, even when they commit the most serious crimes. We ought to extend our child welfare work so that it will cover the entire field from the preschool child to the older adolescent. It is absurd to draw an arbitrary line at sixteen. The same youth, who may be executed, cannot legally control his property until he is of age—that is, until he is twenty-one years old

Juvenile Criminality

There is a fundamental difference between childhood and adulthood: the child is undergoing the strain of growth; sex life, dormant during early years, awakens during adolescence often with disturbing influence upon conduct; and at the time when he must meet the new demands the child is lacking in the experience and training that is required to grapple with the new emergencies. Parental control and school education have in the past largely ignored these factors in the lives of children and young adults. Delinquent conduct may occur even in the normal young person as a result of adolescent instability and lack of experience in meeting the problems of adjustment to the complex conditions of modern life. A clear understanding of the situation is essential in order to deal wisely and effectively with juvenile criminality.

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[1] Mackaye, Youthful Killers in the *Outlook*, vol. 151, pp. 2–6, 33–35, Jan. 2, 1929.

After two years of study of the records of youthful criminals and of over 12,000 normal children in the public schools, the Massachusetts Advisory Council on Crime Prevention has made a partial report of its findings. The commission believes that "the conduct of an individual is the result of his attitude toward life. The attitude of a normal person is subject to change. It was made by education, often it can be modified by education. Attitudes toward life can best be created and modified during youth. It is a significant fact that the adult criminal has nearly always a background of youthful delinquencies, truancy and waywardness."

The report emphasizes the importance of a number of factors seeming to contribute to the risks of delinquency. Among these factors are the following: (1) the relationship of the home and the child; (2) the influence of leisure time activities; (3) the menace of idleness and vocational unfitness as causative factors in delinquency; and (4) the importance of early diagnosis and treatment of the mentally and emotionally defective.

THE HOME

An extensive survey of the reasons for dislike of home and parental supervision based upon an expression on the subject from 10,000 normal school children in Massachusetts gave results as follows: "At eleven years of age seventy per cent of the girls and sixty per cent of the boys found greatest pleasure in the homes and preferred to spend their leisure hours there. For every year after that there was a five per cent loss of the child to the home up to the seventeenth year, where the study stopped."

The investigation showed that 68 per cent of the boys and 78 per cent of the girls gave reasons that indicated that their homes were faulty. Competition of outside interests caused 29 per cent of the boys and 22 per cent of the girls to prefer to be "away from home."

According to the survey, "the fault with the home that caused most of them to seek pleasure elsewhere was a lack of companionship with parents, brothers and sisters and friends. This cause was given by one-fourth of the boys and one-third of the girls."

The next reason given was that of "too much parental control"; 16 per cent of the girls and 14 per cent of the boys gave this reason.

Other reasons were: "nothing doing in my home," according to 7 per cent of the boys and 9 per cent of the girls. Crowding and bad housing, 7 per cent; too many home duties, 5 per cent; lack of play equipment, 4 per cent; and family quarrels, 3 per cent.

The purpose of this Massachusetts study rests upon

> . . . the fact that a great majority of youthful delinquents have in their histories an item which indicates faulty home conditions. It is the duty of the investigator to find out what is wrong and to take steps to correct it.
>
> The most important thing in the home is not the house, nor the furniture, but the spirit in it. This spirit of comradeship with the child is within reach of rich and poor. By it the child is kept in the home, and his chances of serious delinquency are materially decreased. When a child is out of his parents' control, he is usually out of all control. From this group we will fill our prisons tomorrow.[1]

Sutherland points out that, aside from alcoholism and poverty, the break in the home by death, desertion, separation or divorce has been most emphasized. Such records as we have indicate that a large percentage of the children with conduct difficulties in the schools, and of those who are delinquent, come from broken homes. Lack of evidence regarding the situation among children who are not delinquent makes a definite conclusion impossible, but it appears extremely probable that "approximately twice as many delinquents come from homes thus broken as would be expected in view of the entire number of broken homes in the United States."

The break in the home influences the economic condition of the family group and the supervision and control of the children. It is no more a cause of crime than is feeble-mindedness or psychopathic personality, but the broken home is less efficient in the normal socialization of the child. The comradeship between children and parents, the satisfaction of the wish for response is not possible after the break. The important place of the home in the normal training and adjustment of the child is shown in the frequent failure of the immigrant family to prevent the delinquency of its younger members. The need of home training is also seen in the case of the institutional child, where normal social training has been lacking. Probably children brought up in hotels and in preparatory schools by wealthy parents would show very similar results, if careful studies could be made of them. Merely economic care can not make up for the spiritual loss.[2]

DELINQUENCY AND SPARE TIME

A study of the relation of delinquency and spare time was made in connection with the Recreation Survey of Cleveland conducted by the Cleveland Foundation in 1917. A selected group of 124 delinquents was studied. These delinquents were compared with the entire number of boys and girls brought into the juvenile court in 1916 and were found to be generally typical as to sex, ages and offenses as well as nationality, religion and parental status.

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[1] *Massachusetts Department of Correction Quarterly*, vol. V, pp. 1–3, 6, January, 1929.

[2] SUTHERLAND, "Criminology," pp. 143–148, J. B. Lippincott Company, 1924.

A fair interpretation of the facts of the cases studied showed a connection between delinquency and habitual uses of spare time in at least three out of four of all the cases. Since they were typical of the 2,587 official cases brought into the juvenile court in a single year, it means that over 1,900 boys and girls became delinquent during that time in part, at least, because of their habitual use of spare time.

Besides the official cases, there were 2,603 unofficial cases in the same period, and, in addition, those unapprehended companions of the delinquents who might be described as "uncited cases." If they were no more numerous than the official and unofficial cases, the 1,900 mentioned above must be multiplied by three.

Five conclusions were drawn from the study of the selected group of cases: (1) "the act for which the delinquent is cited is like other habitual spare-time acts that are not consistently treated as delinquent by the community"; (2) "the delinquent act is suggested by the habitual spare-time practice"; (3) "the delinquent act is committed in order to get money for recreation"; (4) "the delinquent act is committed to qualify the child for certain recreational opportunities afforded by a recognized play group"; and (5) "the delinquent act expresses a reaction against school, work, or both."

As an underlying factor in many of these delinquent acts, the spare time is often merely idle and without opportunities for wholesome recreation. The importance of this condition is suggested by a comparison of the selected group of boys and girls with a group of children who have become inmates of correctional schools. The institutional group shows a striking limitation in both range and extent of recreational activity. The boys took part in only ten activities as compared with twenty reported by public and private elementary school boys. The delinquent girls report only eleven activities as against twenty-three in which public and private elementary school girls score. The delinquent boys are the only group who have a record for doing "nothing."[1]

Comparison with the "wholesome citizens," and their use of spare time, presents decided contrasts; in place of the small range of recreations of the delinquent group the wholesome citizens of the school-age period enjoy a widely extended and diversified range of activities; in place of empty leisure and aimless pursuits among delinquents, the wholesome citizens show that at the same age period desultory activities formed only a fraction of one per cent of all their activities; and in place of the casually and sometimes stealthily acquired recreational associations of the delinquents, the wholesome citizens testify that in seventy per cent of the cases studied recreation habits were formed under the guidance of parents, teachers, relatives and friends.[1]

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[1] THURSTON, Delinquency and Spare Time, pp. 105–120, *Cleveland Recreation Survey*, 1918.

The Gang

The prevalence of gangs in the so-called "poverty belt" or "zone of transition" is stressed in a recent study of 1,313 gangs in Chicago. It is pointed out that "gangland represents a geographically and socially interstitial area in the city." The term *interstitial* means pertaining to spaces that intervene between things. In nature foreign matter collects and cakes in cracks, crevices and crannies—*interstices;* in society the gang is a similar element, and gangland is a similar region in the ground plan of the city. The gang is characteristic of regions that intervene between the more settled, stable and better organized sections of the city. These regions are made up of deteriorating neighborhoods, shifting populations and the mobility and disorganization of slum areas. They intervene between residential districts and the portions entirely given over to business and industry. They are isolated from the wider culture of the larger community.

A survey of 173 eighth-grade boys attending school in one of these areas disclosed the fact that over eighty-two per cent of these boys, who were from twelve to fifteen years of age, were not connected in any way with constructive recreational activities. With the exception of a small number of boys who were working, the eighty-two per cent passed their leisure time in streets and alleys, shooting craps, playing "piggy-wolf" and other games, taking part in gang activities or were members of unsupervised clubs. Practically all of them belonged to groups that were in reality gangs.

The relation of the gang to organized crime and to politics is undoubtedly very close. The adult criminal gang carries on traditions already established in adolescent groups. The political boss finds gangs very useful in promoting his political interests. He begins with boys' gangs with whom he makes friends by means of money for camping, uniforms, rental and furnishings for clubrooms and other gifts. The alliance between politics and crime is thus facilitated by the conditions that give rise to gangs. An illuminating view of the sources of Chicago's gunmen and criminals and their alliances with politicians is to be obtained by the study of "The Gang," published by the University of Chicago Press. The gang and its problems constitute merely one of the symptoms of the disorganization incident to rapid economic development and the introduction of large numbers of alien workers. Lack of opportunities for wholesome recreation provide the natural soil from which the gang develops. The rest follows as a matter of course.[1]

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[1] Thurston, Delinquency and Spare Time, pp. 114–115; Gillin, Wholesome Citizens and Spare Time, pp. 36–42, *Cleveland Recreation Survey*, 1918.

The facts presented in regard to the relation of juvenile delinquency and spare time suggest that we have it in our power to get rid of crime by anticipating and preventing it. This is a task of social engineering that might well take the first place in the program of our crime commissions, replacing the exclusive attention given to methods of dealing with the criminal and protecting the community; in other words, attacking the underlying maladjustments that produce delinquents and criminals. *Play bills* substituted for *crime bills* seem worthy of thoughtful consideration in view of the suggestions contained in the following statement:

PLAY BILLS FOR CRIME BILLS

"If we'd had more of this when we were kids, I bet a lot of us wouldn't be here now." There was an ache in the prisoner's voice as he spoke to the county recreation director, who had been initiating him and his fellows into active team games. There had been no playgrounds when the prisoner was a boy, and if he gratified his natural and persistent instinct by sneaking onto city greens to play ball, or into some "posted" preserve to find a swimming hole, he "bucked" the law and the law "broke" him. To-day we are arranging things differently and giving the children a chance. Cities are testing the prisoner's theory and finding it to be true. They are discovering that play centers and play leadership are not only builders of health and citizenship but preventives of crime as well. In fact, playground bills to-day promise to cut crime bills tomorrow.

Statistics from a number of cities, writes M. Travis Wood, of the Playground and Recreation Association of America, in *The National Municipal Review* (New York), show that it is not necessary to wait until the present playground children grow up to feel the effects upon crime of expenditures for municipal play. The effects upon juvenile delinquency, a great breeder of adult crime and in itself no small drag upon the taxpayer, are often evident within a few months. They are felt in a falling off of cases coming before juvenile courts and a general lessening of children's destructive mischief. According to a statement recently made by a boy's work director in Bluefield, West Virginia, the city three years ago was sending about fifty boys a year to the state reformatory. In the last two years, only two boys have been sent. "The difference is credited to boys' club work, established three years ago, and to a year-round system of playgrounds and recreation, established one year later." The average cost of maintaining a juvenile delinquent for one year in a reformatory, says the writer, is more than

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[1] THRASHER, "The Gang," pp. 22–23, 409, 452, 493, The University of Chicago Press, 1927.

$400. "Using fifty cents per capita per year as a fair expenditure for the maintenance of playgrounds and recreation centers under leadership, the saving involved in keeping a single child out of the reformatory can provide directed play for more than 800 children." Mr. Wood adds:

> A map study of the effects of playgrounds on delinquency has been made by Mr. T. P. Eslick, Chief Juvenile Officer of the District Court of Iowa, at Des Moines. The location of all playgrounds in the city were charted, and a dot was placed at the residence location of each child who had been brought before the court. The results were striking. A practically spotless area surrounded each playground, shading off into greater and greater density in proportion to the distance from a playground. A similar study made by the Playground and Community Service Commission in New Orleans showed similar results.
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> "Tho I had always felt the influence of these playgrounds upon delinquency, yet I had had no positive proof of it before. These maps fully convinced me. My ten years' experience in juvenile courts in Denver and Des Moines have made me a firm believer in the propostion that playgrounds pay large dividends to the taxpayer in that they prevent much delinquency which would be a very expensive proposition from the standpoint of both dollars and citizenship."

A common form of juvenile delinquency is property destruction, generally caused, we are told, by lack of play facilities. The chief sport of a gang of boys in a Chicago neighborhood, which can probably be duplicated in every city, was throwing stones or snowballs, according to season, at passing automobiles and trains, and sliding down the fenders of parked cars. Since a recreation center has been opened for the boys, motorists have enjoyed perfect peace, and breakage of street lamps and train windows has greatly decreased. Again . . .

> Boys who have no outlet for their spirit of play and adventure sometimes start fires merely for the thrill of seeing the apparatus rush down the street. Such a fire recently caused a loss of $300,000 and resulted in the sentencing of two thirteen-year-old boys to a reform school.
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> The depredations on property of Hallowe'en revelers have been checked in a number of cities through municipal celebrations arranged by departments of recreation and affording the young people more Hallowe'en fun than they ever had before. The manager of the Edison Light Company in Duluth, reported a drop of 37 per cent in breakage of street lights Hallowe'en, 1922, when the city arranged a celebration, as compared with Hallowe'en, 1921, when it did not. In Centralia, Illinois, the damage done on Hallowe'en in 1922 amounted to $500, and by nine o'clock the police had answered about fifty calls to stop vandalism. In 1923 a municipal celebration was staged and not a single case of damage or vandalism was reported. Judge C. W. Palmer of Defiance, Ohio, reported after the city's 1923 Hallowe'en celebration that no offenders were brought into the juvenile court the day after Hallowe'en, whereas in previous years the whole day had been taken up with hearing complaints against young marauders.
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> There is no stauncher advocate of supervised playgrounds and recreation centers than the policeman, who observes at first hand their benefits upon the

rising generation. Chief of Police Daniel J. O'Brien, of San Francisco, appealed to the Community Service Recreation League of that city to extend its work of organizing neighborhood recreation centers into sections it had not yet touched. He had observed the quick effects of the centers in turning dangerous gangs into upstanding young citizens with a keen sense of sportmanship.

The Chiefs of Police Association of Pennsylvania in convention at Wilkes-Barre, October, 1922, adopted a resolution endorsing "the movement of municipal governments and of local organizations working with Community Service and the Playground and Recreation Association of America in establishing playgrounds in sufficient number in all cities of Pennsylvania to prevent juvenile delinquency and street accidents and to provide healthful exercise through efficient supervision."

Playgrounds and recreation centers under leadership, working side by side with the home, the schools, the church and other official and private agencies, accomplish their work of crime-prevention not alone through keeping children away from the demoralizing influence of the streets in their leisure time. They give normal instincts a chance for normal expression. They substitute the team spirit for the gang spirit. The miniature community of the playground serves as a school for citizenship. Through play it teaches the philosophy of give-and-take and the reason for abiding by laws which shall assure the greatest good to the greatest number.[1]

Delinquency and Vocation Unfitness

Sixty-one per cent of the youthful criminals in Massachusetts penal institutions at the time of a recent study were out of work when they committed the offenses for which they were serving sentences. The report also points out that few men with trades are found in jail, and that eighty-five per cent of the inmates of jails were found to be vocationally unfit.

Records of youthful delinquents show that they are rarely trained to earn a living. The percentage of non-criminals untrained is not easily estimated, but is probably, judging from census figures, considerably lower than the jail figures. While criminals cannot compete with non-criminals, their demands are equally as great.

At the time of this study only about fifteen per cent of those employed in the building trades were out of work as compared with the sixty-one per cent referred to above. Apparently the young man without a trade and without a job presents a far greater risk to society than the young man employed at a trade for which he has been trained. Criminals are the "round pegs in square holes."

There are many factors that lead to crime, but one preventable situation is clearly evident. It is an index of failure for a community when a boy is discharged from its schools without supervision and without a job. The responsibility of a community does not end at the fourteenth, fifteenth or sixteenth year. Provision ought to be made to supervise the young person from the time he leaves school until he has found his place in life. The world does not owe any one a living, but it does owe its children an opportunity to earn a living, and that involves some useful training and supervision, and aid in locating a suitable job for which the individual is fitted, and from which he can earn enough to satisfy his reasonable needs.

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[1] Reprinted from *The Literary Digest*, pp. 34–36, May 3, 1924.

Youths out of work are often infection centers of delinquency. The corner gang of loafers should be checked up as carefully as the health authorities check up sources of disease. Society has the same right to protection from social ills as it has in the case of physical disease. Such social protection would keep our jails empty. Habits of industry and a knowledge of a trade for every normal youth would help in the prevention of crime and delinquency.[1]

> Crime is continually growing more juvenile. Our reformatories and jails are filled with mere boys. The maximal age for malicious mischief is only fourteen, for petty larceny and assaults, fifteen, for crimes against property, sixteen; while the maximum curve for fornication is at seventeen. Early and middle adolescence is still the great crime period. The shirking of the average home largely accounts for this boy waste, but the ethical failure of the public school is to a degree responsible also. It is significant that the worst year in boyhood is usually the year after leaving school. Mere age does not account for this, nor the change in life habits. The big fact is the gap between the school and life, and the failure of the former to prepare for the latter.[2]

Delinquency and Child Labor

Sutherland points out that little information has been collected regarding the relation of occupations to crime. Occupation of children seems to be conducive to delinquency. About 38 per cent of those brought into the Manhattan Children's Court in a single year had been employed, though only 10 per cent of the children in general were employed. The working boys committed more serious offences, and manifested a higher percentage of recidivism than the non-workers—the percentages were 43 per cent to 28 per cent. A conservative conclusion suggests that the proportion of working children who become delinquent is about four times as great as the proportion not working. Those employed in street trades seem especially liable to delinquency.[3]

The worst evils of child labor have been removed or greatly reduced and legislation has played an important part in this result. Bad conditions may be found in certain industrialized forms of agriculture and in the mill towns of the South, but the most serious existing evils of child labor arise from the fact that any work of children interferes with health and normal development, prevents the legitimate expression of the child's natural instincts and desires, deprives him of proper opportunity for schooling and play and of training though suitable work. Child labor is objectionable socially because of its interference with any of the rights of children. There may be no undesirable health effects, only an interference with schooling.

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[1] *Massachusetts Department of Correction Quarterly*, vol. V, p. 4, January, 1929.

[2] Fiske, "Boy Life and Self-government," pp. 31–32, Association Press, 1916.

[3] Sutherland, "Criminology," p. 170, J. B. Lippincott Company, 1924.

While there is still a need for the compulsions and prohibitions of school attendance and child labor laws, the largest part of "the task of protecting children from premature school leaving and improper labor depends upon the provision of better schools with stronger holding power, a varied curriculum and flexible grading system, educational and vocational guidance, vocational placement and employment supervision."

In regard to child labor in street occupations, as toward child labor in agriculture, we are particularly tolerant. Juvenile street workers are so common that we take them for granted. We never consider the influence of such work upon the individuals engaged in it. We think of them, if we notice them at all, as bright-faced, healthy-looking youngsters on their way to business success. The actual facts seldom attract our attention—we are in a hurry when we buy a newspaper or have our shoes shined and thinking of other things.

We can only estimate the number of juvenile workers in our city streets. The census of 1920 gives 20,706 newsboys ten to fifteen years of age. If we add to the newsboys, the bootblacks, the errand, delivery and messenger boys, the venders of chocolate, chewing gum and shoestrings, the market-stand helpers and similar "young merchants" and employees, we shall reach a figure of from 200,000 to 300,000 children under sixteen who spend a considerable part of their time in street work.

One child may do several kinds of work on the same day. A twelve year old boy has for five years sold papers several hours after school and nearly all day on Saturday; on Sunday he shines shoes during the forenoon. He is anemic and his school record is poor. Another boy of the same age works as a messenger from 8:00 in the morning until 2:30 in the afternoon when he changes to inside work—selling peanuts and candy in a vaudeville house until 10:30 or 11:00 in the evening. He earns on an average four dollars a week and works practically twelve hours daily.

The eight-hour standard for children under sixteen is now quite well established in ordinary employment. Just what should be the requirement in street trades is not certain, but a boy under sixteen should not be permitted to sell papers from 6:00 to 9:00 in the morning, go to school from 9:00 to 2:30, and then sell papers until 8:00 in the evening,—making a fourteen hour day.

The problem of street work is very largely an educational undertaking; a matter of proper licensing by school authorities and of the limitation of street work so that it will not interfere with school attendance. A study of 1,200 children in Connecticut working on the street showed "a considerable number doing fairly well in their school work," and a few doing superior work, but another large group consisted of children far behind when compared with the general school population. The retarded group was largely composed of those whose long hours of employment detracted from the interest and energy that they devoted to their school work.

Dr. Edward N. Clopper, in his book "Child Labor in City Streets," has shown that the percentage of retardation in school among groups of street-working children in different cities varies from fifteen to twenty per cent in excess of that of non-working pupils. Other studies made in Connecticut, Massachusetts, Ohio, Texas, Pennsylvania and Alabama by different investigators brought out the same general conclusions.

The connection between delinquency and child labor in street occupations was demonstrated in the federal report on *The Condition of Woman and Child Wage-Earners in the United States* published in 1910. A striking illustration of the relationship is found in a table which arranges the various classes of child workers according to the percentage of delinquents they supply. The list is headed by newsboys, who contribute nearly one-fourth of the entire number; following these are the errand boys, the delivery boys, children in markets and stores and then messenger boys. Next come two classes of inside workers followed by bootblacks and peddlers. Fifty-four per cent of the total number were engaged in street work, and this is made more significant because the kinds of street work are few compared with the variety of inside employment. While the delinquent boys were scattered through more than fifty occupations, over six-sevenths of the cases were among the street workers and more than three-fifths came from the errand or delivery boys, the newsboys and bootblacks. Such facts indicate forcibly that putting children to work early is not an effective way of preparing them to be law-abiding citizens.

Of the majority of street workers it may be remarked that their earnings are small and their contribution to family support is unimportant. Where the child turns over all his earnings, there often occurs gross parental exploitation. Instances can be cited of severe punishment of children who did not bring home at night the required amount of money.[1]

A study of *Work, Wages and Schooling of Eight Hundred Iowa Boys* made, during July and August, 1914, in Des Moines and Sioux City, by the Extension Division in cooperation with the College of Education of the State University of Iowa produced certain conclusions in relation to the problems of vocational guidance and their connection with child labor, and the consequent delinquency of juvenile workers.

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[1] Fuller, "Child Labor and the Constitution," pp. 75–123, Thomas Y. Crowell Company, 1923.

The recruits came largely from the sixth, seventh and eighth grades when the children are fourteen, fifteen and sixteen years of age. About 75 per cent went to work immediately, and only a small percentage were idle more than a month after leaving school. Over 85 per cent of the boys found jobs for themselves with little or no assistance. For the most part, teachers did not help them in finding employment. On the average a boy passed through three jobs in two years. Evidently the work was unsatisfactory and did not succeed in holding them. Boys of eighteen received nearly twice the weekly wage of boys fourteen years old, when they leave school. The most popular occupations were typical blind alleys, and a rough estimate indicated that from 75 to 80 per cent were engaged in unskilled or semiskilled work. The most common method followed by the boys in finding a vocation was a "trial and success" method. They try different pursuits to see whether they are suited to it or it is suited to them. It is wasteful and unsatisfactory.

Of the boys, 75 per cent had a definite ambition to prepare for and enter a particular occupation; of these, 35 per cent were interested in lines of work in which they had most of their vocational experience; in the case of 23 per cent there was only a slight correlation between their previous work and their ambition. More boys who were working along lines in which they wished to continue were financially successful than those whose ambitions were outside the fields of their previous work. A larger number of boys with an ambition made some progress toward skill than boys without an ambition. The same boys were earning larger weekly wages. Place a boy in an occupation in which he is interested, and he can earn more money, and he is less likely to be tempted to do things that will get him into trouble.[1]

Over thirty years ago Mrs. Florence Kelley, after three years' experience as state inspector of factories and workshops of Illinois, made the following comments upon the child-labor problem:

> Having been engaged for three years past in enforcing the scant provisions of the Illinois law governing child labor, I am convinced that the only way to deal effectively with the child-labor problem is to keep all the children in school; to turn all the working children into school children.
>
> We all assume, for instance, that there must be cash children and newsboys, and we forget that they are an American invention, regarded with surprise and disapproval by foreigners who come to this country to investigate our educational system. We arrange newsboys' homes and lodging houses and banks; newsboys'

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[1] Lewis, Work, Wages and Schooling of Eight Hundred Iowa Boys in *University Extension Bulletin*, 9, State University of Iowa, Feb. 6, 1915.

picnics and treats, and even from time to time a theatre performance for the newsboys. But why have newsboys? Why not let the unemployed men sell the papers and the newsboys go to school, as our own children do?

Let us have every child in school every day of the school year, until he or she is sixteen years of age. Let us have manual training all the way up, and technical training the last two years. Let us prohibit all employment of children for wages until they are sixteen years of age, except at farming or gardening. Then, after ten years of rigid enforcement of this, let us see whether we have not taken an unexpectedly long step in the direction of solving several problems connected with delinquency, the tramp difficulty, and the incompetence of the unemployed . . .

There is, however, one aspect of the child-labor question which will, in the course of time, perhaps, soften even the heart of the philanthropist. This is the effect which early and enforced morality, beyond the normal lot of little boys, has upon the conscientious orphan who goes to work at ten or twelve, or even fourteen years of age, eager to be as grown up as possible, and as useful to his mother and his employer as any boy can be. I have seen scores of little lads like this; and there are hundreds of such little girls. Every quality of self respect and eager love of service is conspicuously manifest in them for a little while. But precocity is as dangerous in morals as in intellect or genius. At seventeen the lad who promised so nobly is a very different person. The ruin wrought differs according to the temperament of the child. He may be merely a weary drudge, lacking in all the push and grit and pluck which every man needs who goes into the competition of life in this our century. Or he may be suffering from moral fatigue, a disease at least as rife as nervous prostration, though not so candidly diagnosed by the physicians of our social ills. Or, as happens not rarely, the little lad may have succumbed to the temptations to which he ought never to have been exposed, and have stolen some of the cash which we unimaginatively set him to carrying, in the midst of all the things which he longs to possess.

How many cashboys, and telegraph boys, and newsboys have succumbed to the temptations forced upon them in their work we do not know, even in these days of statistics and of child study. But we who know the children by living where they live, and watching the temptations which their sordid home surroundings add to the temptations of their surroundings while at work, cannot fail to know that many a boy (who is discussed with greatest care after he has committed some offense) is the victim of the unwholesome standard of morals which set him to work to support his mother and the younger children before his normal development was equal to the strain, and left him as thoroughly the victim of overdriving as any young horse foundered by overdriving on the race track.

One of the problems of the Settlements is finding work for boys after they are too old for the messenger and telegraph boys' uniforms. These boys have learned nothing in their work which is of any value to them. There is no versatility in them which might make them desirable employees in the hobble-de-hoy age. Their early eagerness to oblige, and to make a record of speed and promptness, has all oozed away. They are no longer dazzled with the prospect of earning $2, or even $4, a week. They know, most exactly, the purchasing power of the wages they are likely to receive, and, balancing the fatigue and exertion against the pay, they simply sit still and wait for something to turn up.

I do not mean that every working boy is morally ruined by his work; but I do mean that the earlier the child goes to work, the greater the probability of his ruin. I mean, too, that there is to be gained, from a scientific study of the working children, an irradiating sidelight upon the tramp question, the unemployed question, the drink question, and the whole ramifying question of the juvenile offender.[1]

The Problem Child

According to the Massachusetts Advisory Council on Crime Prevention, there is evidence indicating the failure of our school systems to handle properly the problem child. A representative group of young criminals in Massachusetts were found to be normal in intelligence, but 86 per cent were retarded from one to six grades. Only 9 per cent were in their normal age grade, while but 4 per cent were one or more grades in advance of their age-grade group. In the entire state 62 per cent are classed as in their normal age-grade group, 27.7 per cent accelerated, and but 10.3 per cent retarded.

The problem child is a source of annoyance to the teacher. He does not conform in work or play to the standards of his fellow pupils. He is frequently the storm center of minor delinquencies. He needs special treatment.

A first step is to understand him. The public schools need the services of psychiatrists and habit clinics. At present there are twelve traveling clinics working in the schools of Massachusetts. Evidently the state Department of Education recognizes the problem. There should be more visiting teachers to go into the homes, educate the parents and bring about closer cooperation between the school and the home. Massachusetts has sixteen visiting teachers for 688,214 school children. Eight are in Boston and the others are in the larger communities. Smaller communities need the visiting teacher more than the larger communities, as they have no other organizations upon which to call.

The problem child of today is the criminal of tomorrow. Ten years from now the prison doors will open to admit a young criminal.

> The lad of 1929 played truant in 1930, ran away from home in 1931, stole an automobile in 1932, got the reputation of being a bad boy, made friends with an older and more reckless fellow. He joined a gang, carried a revolver, but didn't have the nerve to use it. In 1934 he got a sentence of six months for being in a group who broke into a grocery store and robbed the till. He was treated lightly because of his youth. He kept out of trouble for three or four months, worked irregularly as helper on a delivery wagon. He got interested

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[1] Kelley, The Working Child in the *Proceedings of the National Conference of Charities and Correction*, pp. 161–164, 1896.

in a girl. He needed more money, gambled and lost. He stole an automobile, took the tires off and sold them, and hid the wreck of the machine in an old barn. He was arrested, but got off because of lack of evidence. On the ragged edge of a criminal career, he lived for several years. In 1938 he and another fellow broke into a store, opened the safe and took over $200. There had been several robberies in the neighborhood and the police were on edge. He was sentenced to State Prison for a term of ten to fifteen years in 1939. Why didn't some one get him back in 1929 when he was a 12 year old truant?[1]

The Socialization of Court Procedure

The juvenile court represents the way in which an ancient legal institution like court procedure may be socialized. Courts have been rendering decisions for centuries, but until the juvenile court developed no one ever tried to trace the actual result of a court decision in terms of human values. The juvenile court maintains the spirit of the clinic; it is a laboratory of human behavior.

In theory the court is parental, a court of guardianship, not a criminal nor a quasi-criminal court, but an agency where the real issue is the welfare of the child. It is derived from the old Anglo-Saxon concept of the King as "the ultimate guardian of his subjects." It is a modern outgrowth of the power of *parens patriæ* administered through the English courts of chancery or equity. The common people looked to these courts for protection against the rigors of the common law and the aggressions of the upper classes.

The legal basis of the juvenile court is rooted in equity, but two modern ideas concerning the child have contributed to the development of the court. One is biological and points out that the child during the period of growth is plastic and capable of the greatest modification. His responses are governed by natural laws related to youth. The second idea is that the child is an asset of the state, and that it is the duty of the state for its own self-preservation to take care of the child when his parents have failed him. The pioneer Illinois juvenile court law embodied these principles and the machinery established to enforce them reverted to the ancient usage of Anglo-Saxon jurisprudence. The juvenile court is not "a kind of modern, benevolent mushroom, foisted on the body of the law by social uplifters."

During the last twenty-five years specialization in child welfare has resulted in the development of juvenile courts to care for delinquent and neglected children. If the court is modern in its point of view and its equipment, it can do many things for the child and the family. Its assumption is that a child found delinquent is in need of supervision and protection, since his home training has broken down. The presence of a child in the court is always evidence that something is wrong with the home. The child becomes, consequently, a ward of the state and remains in such relation often over a period of years. The court thus assumes a very different function from that of conducting a criminal trial and pronouncing sentence on a convicted offender.

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[1] *Massachusetts Department of Correction Quarterly*, pp. 4, 5, January, 1929.

In the last quarter of a century many children's courts maintaining high standards have been developed. Since the pioneer courts were established in Illinois and Colorado the movement has spread until now there are but two states without some law providing a special type of court for children. But in many states the legislation is inadequate and should be improved. Many courts handle children's cases by methods similar to criminal procedure and probation may not be used at all or may be very ineffectively applied. We are still a long way from an ideal of uniform excellence in the court care of children. Such an ideal will not be attained until every child, who breaks the law, or is neglected or uncontrolled, is brought under the supervision of a progressive children's court where he will receive skillful, understanding and constructive care.

Juvenile court studies were among the first undertaken by the Children's Bureau, and in 1918 certain information for the entire United States was obtained through questionnaires and correspondence from 2,034 courts having authority to hear children's cases that involved delinquency or neglect. To measure the extent of special organization for children's work, a very simple standard was formulated including only: (*a*) separate hearings for children; (*b*) officially authorized probation service; and (*c*) the recording of social information. According to this standard only 321 of the 2,034 courts could be classified as specially organized for juvenile court work. In half of the states less than a fourth of the population was within reach of the courts equipped for children's work, and in several states no such court was reported. Specially organized courts were found in all the cities with populations of 100,000 or over and were available to 70 per cent of the total population living in cities of 25,000 to 100,000. Courts were available to 29 per cent of the total population of cities of 5,000 to 25,000 and to only 16 per cent of the population of rural communities judged by the same standard.

In twelve states special juvenile courts, independent of other courts, have been created for the larger cities or counties, and in the District of Columbia an independent court has been established. Independent courts are not practicable in communities where the number of cases is too small to require the full time of the court staff. In most states jurisdiction over children's cases has been vested in county or district courts. Such an arrangement can be made entirely satisfactory, if provisions are inserted in the law prescribing special qualifications for the judge and full-time service. The jurisdiction of the court should be effectively extended to cover the entire county. The greatest defect at the present time in the development of the juvenile court is its failure to reach adequately the rural communities. The situation in Iowa is typical of the status of the court in this respect. Paid probation officers are provided for by law only in counties with a population of 30,000 and over. There are 84 counties with less than 30,000 inhabitants, and only 15 with a population of over 30,000 enjoy the benefits of paid probation service, while the remainder must depend upon the voluntary service of public spirited persons.[1]

To function properly the juvenile court should have first of all a judge chosen because of his special qualifications. He should have, in addition to his legal training, an understanding of social problems, particularly those involving children, and a sympathetic knowledge of child psychology. Equally necessary are the assistants of the judge who gather the information about the child and who carry out the after-care work. Probation officers should be selected from experienced case workers who have the tact, judgment and sympathy necessary to handle children. Preferably, they should be college graduates or from a school of social work. Training in psychiatric work is also a valuable preparation. The job calls for the highest personal qualities developed by specialized training. A probation officer can not hope to get results unless he is superior in understanding to the parents, who have already blundered even with the best of intentions. The trained probation officer is not unlike the medical specialist in children's diseases, only his field is that of conduct and behavior.

There should be an adequate staff of men and women to do good work. Men should deal with the older boys and women with girls and younger boys. No probation officer should have to supervise more than fifty children at one time. The department should also be equipped with an efficient record system and sufficient clerical help. The privacy of the records should be carefully preserved. It should have facilities for mental and physical examinations of all children. The great significance in conduct problems of physical, mental and emotional irregularities is being realized more and more in connection with the scientific study of the individual.

Every well-equipped juvenile court should have a detention home for children awaiting disposition and for temporary emergency care. This home should be as unlike a jail as possible and should have opportunity for medical care, school and recreation. If a detention home is not needed because of the limited number of children, there should be facilities meeting standard requirements—carefully selected boarding homes are often a satisfactory substitute.

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[1] Lenroot and Lundberg, Juvenile Courts at Work, pp. 1–6, *Children's Bureau Publication* 141, Government Printing Office, 1925.

The juvenile court method involves two processes: (1) A careful inquiry into the causes of delinquency. This includes a detailed study of the child, his history, his mental and physical make-up, his family and neighborhood setting and his own reaction to his environment. During this preliminary analysis, physical and mental examinations are given. They often contribute most important information for dealing with the child. (2) The judge, with the report of the study to aid him, considers the delinquent and his difficulties in a private and informal hearing as far from the procedure of a criminal court as possible. The regular court room is not used and the judges' chambers or offices are substituted. Reporters are not admitted and every effort is made to prevent publicity. Only the parents and necessary witnesses are present. Frequently the judge will talk with the child or with his parents alone. It is really a conference of interested parties rather than a trial in the legal sense. The usual term—juvenile court—is a complete misnomer, if the character of the work is really social and parental. Unfortunately, too frequently there is altogether too much to remind the participants of the usual procedure of a court of law.

After the child has been placed on probation, his supervisor makes plans for him based on an analysis of the whole situation. Real probation does not mean just releasing a child with a reprimand or a suspended sentence, nor does it mean merely requiring him to report at regular intervals. It means untangling and straightening the elements in his experience which got him into trouble and retraining him for a normal life. This is the method of social case work with the added factor of the authority of the court in the background. Not infrequently, more work must be done with the parents than with the child. One probation officer estimated as one-fourth with the child and three-fourths with the family. Supervision on probation involves constant and constructive help on a basis of friendly and sympathetic understanding. Only tactful and interested treatment can bring about a modification of attitudes and readjustment to the environment. When such a result has been reasonably accomplished, the officer will recommend discharge to the judge who has set no definite limit to the probationary period.

To meet the needs of a modern juvenile court a sufficient budget should be provided. The economy of such an expenditure is readily apparent. To prevent children from developing into criminals is immensely less expensive in the long run than to let them become criminals.[1]

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[1] *The Child and the Court*, published by the National Probation Association; Lou, "Juvenile Courts in the United States," University of North Carolina Press, 1927; The Child, the Clinic and the Court, a group of papers published by the *New Republic*, 1925.

Requirements for Socialization

In a discussion of the socialization of juvenile court procedure, Miriam Van Waters of the Los Angeles Juvenile Court describes the following three requirements:

> The first requirement in socialization is a method for getting the whole truth about the child. Analogy here brings the court close to the spirit of the clinic. The physician searches for every detail that bears on the condition of the patient. The physician demands all the facts because he believes it is only good that can follow to his patient. The patient is privileged to expect a *good*, but only on condition that he reveal all the facts and submit himself utterly. He is freed from fear because the aim of the examination is his own welfare.
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> Quite contrary is the spirit of legal action. The defendant is hemmed about with elaborate safeguards against improper questions. The right of a witness not to incriminate himself, his right to the secrecy of certain inviolate privileged relations and communications, all the rules of evidence that exclude certain kinds of truth from the ear of the court as irrelevant, incompetent and immaterial have grown up with a view to protect the individual from the power of the state to inflict penalty upon him. Fear of injustice, dread of punishment, these are the human emotions expressed vividly in the dry phrasing of the rules of evidence.
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> The Juvenile Court, on the other hand, can demand the whole truth because it has the power to save, to protect and to remedy. Its orders, or judgments, are not penal, but parental. Its object in determining truth is not *incrimination* but the gaining of that understanding which must precede constructive discipline or treatment. In a trial at law the early history of the defendant is immaterial from a legal point of view. The fact that in childhood he suffered from night terrors, that at nine years of age he had convulsions, that an early sex experience has distorted his view of reality, that his sisters are prostitutes and his father an alcoholic epileptic, may not have the slightest relevancy in court procedure. His wife may be incompetent to testify that he confided to her the secret strains and repressions that have warped his behavior. In short, the truthful picture of the man as an individual may be ruled out of consideration. In a socialized juvenile procedure no useful evidence should be excluded from the court. Each relevant fact should be admissible, but we should adhere closely to that body of the rules of evidence which applies the test to truth. Hearsay, incompetent evidence, opinion, gossip, bias, prejudice, trends of hostile neighborhood feeling—all these sources of error should be ruled out of the Juvenile Court as rigidly as from any other court. If socialization of court procedure means letting down the bars so that social workers can dispense with good case-work, or can substitute their fears and prejudices for the presentation of real evidence, heaven forbid any increase in socialization! No, the test of truth in the Juvenile Court should be definite, scientific, carefully scrutinized.
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> The second principle in socialization is cooperation. In order to secure the welfare of a human being, it is necessary that he assent. Compulsory uplift, like compulsory education, is difficult. if not, socially, impossible. To the clinic the patient comes because he feels sick; in the court the young person comes

because he must. It is the business of the social worker . . . to make him feel sick beforehand; that is to say, the social seriousness of the situation should be established. The child should be made to feel penitent, but charging him with guilt is not the best way to accomplish this result. Such a course in the nature of an attack places him on the defensive, it is a challenge and his mind leaps to the encounter.

"What are you charged with, Jim?" asked the matron in a detention home of a small boy. "Soda water, see, I am charged with soda water. I stole a case of it." His flippancy disappeared in court, however, under the following procedure. "Who earns the living in your home?" "Mother." "How?" "She scrubs floors, but she is in the hospital now." "Who cooks?" "My little sister." "What do you do to help?" "Nothing."

The small boy begins to feel uncomfortable and to shed tears. Your response depends on where you place your emphasis.

How change of emphasis from a procedure designed to incriminate and to convict to a procedure socialized and aiming at welfare—how this change of emphasis leads to change in the attitude of the child is seen nowhere more clearly than in the treatment of young girl sex-offenders. Los Angeles is the honey pot of movie-dreaming youth. One girl of eighteen was recently before the court on a police complaint of soliciting. She lived in Detroit and had lodged in half a dozen jails en route. Arraigned in the police court of Los Angeles, she was transferred to the Juvenile Court. She was plainly bored there. Well she knew she could not be convicted of anything more serious than vagrancy. This quiet room, this woman sitting as judge, these women who sat as clerk, reporter and bailiff—why, it was all child's play.

"Why are you here?" she was asked.

"Well, they can't *prove* anything on me. No one ever saw me take a cent, and I had my clothes on."

"You are not accused of anything here, save that you are a person under the age of twenty-one with no parental control, and in danger of leading an immoral life, and should the court find it necessary for your protection, you can be held until you are twenty-one."

It was a bewildered young person. Gone were the old words to lean on, "bail," "guilty or not guilty," "fine," "thirty days," etc.; gone the smiling policeman, the friendly detectives. She was just a girl, stranded; a prodigal daughter, not a defendant. Yet this court impressed her with the power it had to compel obedience. She told her story. She submitted to discipline. What prosecution could not do, cooperation secured in half an hour.

So, too, in matters pertaining to the custody of children. Parents accustomed to regard the child as private property are perplexed at a view which places the welfare of the child first. A girl of eleven had been neglected at home. Parents, two sets of step-parents, flanked by the in-laws, flung mutual charges ranging from blasphemy to incest. "This is not a domestic arena," they were told; "only one issue is here today—what can you suggest for the welfare of this child?" When it was made clear to them that the child herself had the paramount right, that parental selfishness must give way, their attitude changed gradually and, instead of demanding a property right, they agreed that at the present time none of them was fit to have her.

A third principle in socialization is the dynamic principle of modification of of order provided for in the Juvenile Court. In general legal proceedings the sentence, or judgment, is final. But the Juvenile Court's decisions are like youth itself, capable of being modified. The courts have held unfitness temporary. What does that mean? It means eternal chance for the erring parent; it may mean the opportunity for reconstructed family or individual life.

Jennie, a girl of twenty-three, formerly a ward of the Juvenile Court, was married to a soldier and mother of a three-year-old boy. The husband had sought unsuccessfully in the divorce court and in the criminal court to deprive her of the custody of the child on the ground of her unfitness. Nothing could be *proved* against this mother, and yet one look at the child, thin, with pale, sad eyes, supported the belief that he needed care. The matter came into the Juvenile Court. Jennie resisted any attempt to incriminate her, and her success as a client on the defensive had become proverbial.

"Your *child*—has he had a chance?" not the question, had she been guilty of misconduct? but—"Your little boy—is he all right?"

Brushing aside her attorney, she said, "No, no, I have neglected him."

Then followed her statement of her unfitness with a plea for a chance to prove fitness. Six months afterwards she had won back her baby, whom she had given up voluntarily for his welfare. She had cooperated in a plan of constructive rehabilitation.

To sum up: Socialization of Juvenile Court procedure depends on the clear, firm grasp of the principles of equity. The court is one of guardianship, not a penal court. Nothing that the child says can incriminate him in this court because the object of the court is his welfare. Socialization involves cooperation, constructive discipline, and the dynamic concept, as expressed in the principle that an order in this court may be modified as life conditions are modified.

The chief obstacles to socialization of Juvenile Court procedure are lingering shreds of penal terminology and criminal law usage. Obsolete thinking and unclear thinking are obstacles. Socialization implies that judges and court officials are to be experts, experts with scientific training and specialists in the art of human relations.[1]

Reconstructing Behavior in Youth

The basic thought underlying the treatment of juvenile offenders during the last generation is that their personality and conduct problems are capable of solution in a great many cases. Because these problems develop out of the processes of growth, and because juvenile offenders are still plastic, their behavior difficulties are amenable to treatment from a sociological, psychological and psychiatrical standpoint. Individual case study, followed by prolonged control under favorable conditions, makes it possible to diagnose particular problems and apply remedies. Child welfare agencies and juvenile courts have now been at work long enough to estimate the accomplishments and failures in the modification of behavior tendencies during a period of years.

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[1] Van Waters, The Socialization of Juvenile Court Procedure in the *Journal of Criminal Law and Criminology*, vol. XIII, pp. 64–69, May, 1922.

A recent study, under the direction of Dr. William Healy and Dr. Augusta Bronner, of 501 young individuals includes all the cases of delinquency and personality difficulties which were dealt with by the Judge Baker Foundation during eight years, and which received treatment by placement in foster homes. This series of cases contains a large share of especially difficult individuals; many had been in court more than once, and others had proved particularly unyielding under the earlier efforts of child helping agencies. The large proportion of serious cases is due to the fact that frequently it is only after much unsuccessful work that the services of the Foundation are sought. Of the delinquents, 75 per cent had repeated their offenses after attempt had been made to check their misconduct, and 65 per cent had been in juvenile court. They were placed in foster homes with the hope that, through better personal contacts and better general environmental conditions, essential changes in behavior would ensue.

The cases came from varied sources and represented a rather wide geographical distribution in New England. About 40 per cent came from the Boston Juvenile Court; 355 individuals were placed and supervised by fourteen private agencies, 95 by the Massachusetts State Division of Child Guardianship, and 51 by probation officers of the Boston Juvenile Court. Seventy per cent came from city homes. Of the homes used for placement, 41 per cent were in the country, an equal number in the suburbs and 18 per cent in the city.

For the entire group the mentality classification was as follows:

	Per cent
Mentally normal	66
Defective	10
Psychotic, mentally diseased	1
Abnormal and peculiar	23

The abnormal and peculiar personalities included definitely psychopathic personalities, constitutional inferiors and personalities so peculiar as to be regarded as abnormal.

"Success" and "failure" as standards were defined as follows: *success* "means that the individual made a steady gain in his ability to master his difficulties and maintain his position as a desirable member of a family and of a community"; *failure* "represents those whose delinquencies persist or whose personality difficulties remain or increase, or whose habits are largely unmodified, so that they do not adjust satisfactorily to conditions in family life." Both are based on observed behavior in the foster homes.

The length of time that the children have been known to the Foundation varies greatly; the range is from one to nine years. The vast majority have been known at least several years. The time under the care of the placing agency varies from less than one year to nineteen years. The median age of the children at the time of study was twelve years.

Careful conclusions of the results of the study indicate that delinquent children, even though severely delinquent, can be treated with great assurance of success through placing in foster homes. For normal personalities the chance of success is over five to one. When delinquency is complicated by abnormal mentality or personality, the chance of success drops very signally. The most difficult group is that with abnormal personalities who are delinquent, and particularly those who show fully developed traits of psychopathic personality. It is evident that as yet there is little knowledge of effective methods for dealing with mentally abnormal young persons.

The tables, covering simple delinquency and polydelinquency as related to success and failure and to mentality, show that mentality affects the results much more than does the number of types of delinquency committed. There is a decrease of success for both the normal and abnormal as the number of types of delinquency increases, but for the normal the decrease is slight, while for the abnormal it is "very marked."

The following table contains the general results of the study:

	Success		Failure	
	Number	Per cent	Number	Per cent
Normal Mentality				
Delinquents:				
Repeated offenders	94	81	21	19
Non-repeaters	37	92	3	8
	131	85	24	15
Personality and habit problems	59	95	3	5
	190	90	27	10
Defective Mentality				
Delinquents:				
Repeated offenders	4	..	2	
Non-repeaters	4	..	1	
	8	..	3	
Personality and habit problems	6	..	3	
	14	70	6	30
Abnormal Mentality or Personality				
Delinquent:				
Repeated offenders	25	36	45	64
Non-repeaters	9	..	7	
	34	40	52	60
Personality and habit problems	12	75	4	25
	46	45	56	55

This table covers only the 339 cases placed by private agencies, because these agencies have opportunities for more careful selection of homes, more intensive supervision, and are not so bound by limiting regulations as are the public authorities.[1]

The study by Dr. Healy and his associates is probably the most thorough and the most scientific investigation that has yet been made of the reconstruction of behavior in youth. It is, however, based upon only one method of rehabilitation—the use of foster homes. Many other methods of accomplishing the same results have been developed by juvenile courts, child guidance clinics, social workers, teachers and public-spirited citizens. In connection with these practical working programs, problems have arisen in regard to mental deficiency, emotional instability, habit formation, family relationships and leisure-time activities, which have appealed to the interests of psychologists and sociologists, who have linked up their research with the practical programs. Through these alliances much valuable information has been obtained

Out of the juvenile court movement, which had in Chicago arisen largely as a protest against the practice of confining small children in the county jail where they came in contact with hardened criminals, the idea of a "detention home" developed. It seemed proper that the court, in assuming the relation of a parent to the child, should establish a home where the delinquent child could be detained, examined, taught and corrected among those of his own age and, in the end, restored to society. The objective aimed at was, of course, the reconstruction of the problem child as to behavior and conduct by treatment suited to the varieties of maladjustment manifested in each particular case. Unfortunately the conception contained "a fundamental misapprehension as to the effect of the congregation of young boys who have shown bad behavior tendencies." We think of "influence as transmitted from the older to the younger, and regard the placing of young children with old criminals as a horrible practice, while, actually, influences seem to spread more rapidly laterally, as between members of a younger generation, than vertically, as between members of different generations. The congregation, consequently, of bad boys in juvenile homes and reformatories has had unexpectedly bad results. Young boys seem to be influenced toward bad behavior more positively by the tough boys under sixteen in the detention homes than by the old criminals in the jails." Here is the chief handicap of the detention home in the reconstruction of behavior in youth.[2]

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[1] HEALY, BRONNER, BAYLOR and MURPHY, "Reconstructing Behavior in Youth," pp. 227–234, 244–255, Alfred A. Knopf, Inc., 1929.

[2] THOMAS and THOMAS, "The Child in America," pp. 95–107, Alfred A. Knopf, Inc., 1928.

The Berkshire Industrial Farm in the State of New York is representative of the best type of institution developed for delinquent boys in the United States. It is an old and privately supported institution and is more like a boarding school than an institution for delinquents. There is a large farm and there are opportunities for all kinds of sports. Beginning with boys from New York and New England, the Farm received, in 1926, problem boys from fifteen states, sent chiefly by the bureaus of child guidance and city and county judges. Many of the boys seem to make adjustment to the life of the farm very simply. They enjoy the outdoor life and physical activities and thus find an outlet for their energy and desire for adventure. A good many give no trouble, and when they leave the farm are given jobs similar in their conditions to those on the farm. There is a good agricultural and horticultural department, so that the boys are really well trained when they leave the farm. There is excellent trade training in auto mechanics, house building, printing and plumbing. No boy leaves until a job is actually found for him and there is very careful follow-up work. There are a good many runaways, probably one almost every week, but there is no patrolling and no attempt to bring the boy back forcibly if he runs away. About three-fourths go a short distance and then telephone asking to be allowed to return. The whole policy of the institution is to provide as many legitimate outlets for adventure as possible—competitive games, camping, hiking, fishing and life saving. There is a large percentage of success—83 per cent is claimed by the authorities, but this is based upon a loose method of estimating success.[1]

Following the establishment of child clinics in a few of the juvenile courts, the idea developed of organizing clinics to serve whole communities. They were to receive problem cases from the courts, schools, the social agencies and from homes. In addition to the clinics located in cities, traveling clinics were established to encourage local interest and extend the service as widely as possible. The work was first promoted on a large scale by the field demonstrations organized by the Commonwealth Fund Program for the Prevention of Delinquency.

Partly as a result of these clinics, the clinical service of states and institutions is being extended to include conduct problems as well as problems of health and mental deficiency. At present special attention is being given to the extension of clinical service to rural communities. The character of this work is indicated in a report of the Mobile Clinic of the Iowa State Psychopathic Hospital. The Illinois Institute for Juvenile Research is beginning a systematic program of state-wide service in addition to the local activities and research projects at the headquarters in Chicago. There is also a movement under way "to introduce

[1] Adapted from Thomas and Thomas, "The Child in America," pp. 115–117, Alfred A. Knopf, Inc., 1928.

mental clinics into high schools and colleges, not only to deal with behavior problems in their early stages, but as a systematic exploration of the personality of students as a group, with the hope of discovering and correcting latent and secret maladjustments." All of these undertakings are aimed at the reconstruction of behavior in youth before conduct difficulties and personality characteristics have become fixed.[1]

A great number of organizations are now carrying on "community programs which are the modern expression of the neighborliness and mutual aid of earlier times or a form of idealism originating and spreading spontaneously among groups of socially minded people." Many of them are relief and emergency instrumentalities. Other types represent religion and a moral way of life on the one hand, and physical manhood and participation in sports on the other. Such an organization is the Young Men's Christian Association. The Boy and Girl Scouts are character education institutions making use of the child's interest in nature, adventure, pioneer life, Indian lore, woodcraft and the acquisition of skill and distinction. The Big Brother and Big Sister organizations are undertakings to enlist the interest of men and women in behalf of individual boys and girls, especially of those who have come before a juvenile court. Boys' Clubs have been organized all over the country for many years, both to provide for the individual boy who has no gang relations and also to offer alternative opportunities for gangs as a whole. Probably they have been more successful in keeping good boys from delinquency than in redeeming the bad boys, who find gang activities more exciting and satisfying. The organized movement for recreation and playgrounds which began in the nineties has been an important factor in preventing juvenile delinquency by offering opportunities to engage in healthful activity and amusement. All of these community organizations have undoubtedly aided to some extent in combating influences leading to delinquency. Not even an estimate can be made of their accomplishments.[2]

"Probably the most important and certainly the most widespread and vigorous of the movements designed to meet the needs of the school in handling problem children is the visiting teacher movement. The visiting teacher is generally a person with experience in teaching and social work. Problems of adjustment are referred to her by the teachers. She studies the home and neighborhood situation and tries to interpret the school to the home and the home to the school." The visiting teacher situation has been worked out most completely by the White-Williams Foundation in Philadelphia, in the public-school system of Rochester,

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[1] THOMAS and THOMAS, "The Child in America," pp. 144–165, Alfred A. Knopf, Inc., 1928.

[2] THOMAS and THOMAS, "The Child in America," pp. 166–218, Alfred A. Knopf, Inc., 1928.

New York, and by the Public Education Association, a national organization affiliated with the Commonwealth Fund and primarily interested in educational problems. These three experiments illustrate the possibilities latent in our school systems for dealing in the preliminary stages with conduct problems. The schools must take over many of the functions previously left to the family, but which the family is increasingly unable to perform. These functions have often fallen to the clinic, the court and the institutions. The school is the logical place for study and control of behavior problems.[1]

Another extensive movement in the schools may be interpreted as an effort to take over responsibility for the behavior of children, but with an emphasis upon "character building," based upon programs of moral instruction rather than by modifying and changing the school situation with the purpose of "making the school fit the child." A generation ago the role of moral precepts was regarded as important in the proper training of a child, and influences of this kind were used in the home and in the church. The failure of the church as an institution for the control of the younger generation has probably been responsible for the development of so-called "character education" in the schools. It represents on the one hand the "good thoughts— good deeds," precepts of the Sunday School and church, and on the other hand the taking over of more functions of social control by the schools.

The process of character education calls for the repetition of certain principles of conduct with commendation or rewards for the performance of virtuous acts. "The children in the schools who are 'corrigible,' who conform generally to the rules, and get satisfaction through the school activities, are probably appealed to through the precepts developed by the teachers. But the children, who are more or less unadjusted, seem not to be greatly influenced by the moral instruction, and are sometimes positively repelled." The superiority of the visiting teacher work over character education is hardly open to question. The preceptual method is as inadequate in the school as it has proved itself to be in the church. The development of virtue follows adjustment rather than precedes it.[2]

In a book entitled "Parents on Probation," Miriam Van Waters of the Juvenile Court of Los Angeles lists nineteen ways of being a bad parent, not including those dealing with the physical care of the child. The part played by parents in juvenile delinquency has already been discussed. The recognition that frequently the parent rather than the child is the real delinquent has led to the development of efforts to train the parents as well as the children. A great variety of methods of approach have been used. Adult education, parent-teacher associations, child study, child welfare research and nursery schools have all contributed to parent education. The general trend seems to be in the direction of training for parenthood in earlier years. The limitations to the education of existing parents are admitted. It is necessary to take care of present maladjustments, but the greater emphasis is placed on the prevention of maladjustments in the next and succeeding generations.

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[1] Thomas and Thomas, "The Child in America," pp. 227–272, Alfred A. Knopf, Inc., 1928. The Joint Committee on Methods of Preventing Delinquency under the auspices of the Commonwealth Fund has prepared several volumes describing the work of visiting teachers and their problems. These include "The Visiting Teacher Movement" by J. J. Oppenheimer in 1925; "The Problem Child in School" and "The Problem Child at Home," both by Mary B. Sayles, published in 1925 and 1928.

[2] Thomas and Thomas, "The Child in America," pp. 273–294, Alfred A. Knopf, Inc., 1928.

Better training in the processes of character formation ought to prevent the tragedies that grow out of the determination of a dominating parent that his child shall follow a certain career regardless of his own inclinations and abilities.

Frederick Dutton illustrates such a parental problem. His father is "a self-made man in the best American tradition. He is practically uneducated, stern, hard, ruthless and financially fairly successful. He does not believe that money and lack of exceptional ability can happen together. Frederick is to go to Yale and be a lawyer. No other college will do and no other career." The fact that Frederick's I. Q. of 101 is distinctly lower than the usual level of a college of Yale's standing, his inability to grasp abstractions, his truancy and reckless attitude made no impression upon his father. He proposed to "whale it out of him." Frederick had a genuine interest in business. The only thing he ever read voluntarily was the financial section of the newspaper. "He talks surprisingly well on trade tendencies, business methods and kindred topics. He said he wanted a job, not a trade—something about a bank. 'And I could study banking and stuff like that at night school. They have some keen courses.'"

His teacher talked to Mr. Dutton and told him she knew of such a job. "But," his father stormed, "that's precisely what I won't allow—it's what the boy himself wants. He is going to Yale and he is going to law school and he's going to be a lawyer."

"Frederick stayed on at the high school where he had entered at fifteen years and ten months for another year, failing in history, English, Latin and mathematics. His pleasant face grew bitter and sullen. His truancy increased. At the end of the year, because of his truancy and scholarship, he was dropped."

His teacher had one more interview with Mr. Dutton, but he remained "firm." "I'll have a tutor for him this summer. I'll put him in a good private school in the fall. That boy's going to Yale."

A little later Frederick came to say goodbye to his teacher and she told him of his father's decision.

"Yale?" Frederick sneered, "The old man says I'm going to Yale? I'm going to hell."

Parents do not argue with the dentists or doctor, but the opposite is true in the case of the educational or social expert.[1]

Review Questions

1. Explain the process by which youthful delinquents have been removed from association with adult offenders.
2. What is the significance of the juvenile court?
3. When and where did it originate?
4. Why did not Massachusetts lead?
5. What was Judge Lindsey's contribution?
6. What has been the great contribution of the juvenile court?
7. Discuss the case of the two brothers.
8. Explain how it is possible in New York to electrocute a child between the ages of seven and twelve.
9. Why does not a juvenile delinquency act protect children from such consequences?
10. Discuss the case of Paul Chapman.
11. What is the solution of the problem of youthful murderers?
12. What is the fundamental difference between childhood and adult life?
13. What factors contribute to juvenile delinquency?
14. Discuss the relation of the home to juvenile delinquency.
15. Show how delinquency and spare time are related.
16. What is the relation of the gang to organized crime and to politics?
17. What is suggested by the proposal to substitute play bills for crime bills?
18. What is the connection between delinquency and vocational unfitness?
19. Explain how child labor leads to delinquency.
20. What consequences follow the failure of the schools to handle problem children properly?
21. What is meant by the socialization of juvenile court procedure?
22. What requirements are essential for the proper functioning of juvenile courts?
23. Illustrate these principles by their use in specific cases.
24. Is the concept of socialization antagonistic to legal principles?
25. Describe the results of the study by Drs. Healy and Bronner.
26. What is a fundamental misapprehension involved in the establishment of detention homes?
27. Describe the different types of work developed for the purpose of reconstructing behavior in youth.
28. Estimate the comparative effectiveness of a number of these plans.
29. Explain how the parent is frequently the real delinquent.
30. How can the problem be dealt with most successfully?

Topics for Investigation

1. Explain how the juvenile court developed from the English courts of equity. See Gillin, "Criminology and Penology," pp. 790–791, and the *Journal of Criminal Law and Criminology*, pp. 61–69, May, 1922.

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[1] Ratliff, Those Problem Parents in *The Survey*, vol. LV, pp. 669–671, Mar. 15, 1926.

2. What is the relation of probation to the juvenile court? See Sutherland and Gillin.

3. Discuss the need of the extension of the juvenile court. See Sutherland, "Criminology," pp. 298–299.

4. What are some of the unsolved problems of the juvenile court? See Gillin, "Criminology and Penology," pp. 802–804.

5. Discuss the trend in juvenile delinquency. See the *Journal of Criminal Law and Criminology*, pp. 167–172, August, 1926.

6. Study the gang situation in Chicago in its relation to juvenile delinquency. See Thrasher, "The Gang."

7. Study the problem child. See *Three Problem Children*, *The Problem Child in School* and *The Problem Child at Home*, published by the Commonwealth Fund.

8. Study the work of the Berkshire Industrial Farm. See Thomas and Thomas, "The Child in America."

9. Study the work of the George Junior Republic. See George, "The Junior Republic," and George and Stowe, "Citizens Made and Remade."

10. Discuss the relation of parents to juvenile delinquency. See *The Survey*, pp. 669–671, Mar. 15, 1926, and Van Waters, "Parents on Probation."

Selected References

1. SUTHERLAND: "Criminology," Chap. XIII.
2. GILLIN: "Criminology and Penology," Chaps. XXVI, XXXIII.
3. ROBINSON: "Penology in the United States," Chap. VI.
4. QUEEN: "Social Pathology," Chap. VII.
5. VAN WATERS: "Youth in Conflict," Chap. I.
6. BOWEN: "Safeguards for City Youth," Chap. IV.
7. SLAWSON: "The Delinquent Boy."
8. BURT: "The Young Delinquent."
9. LOU: "Juvenile Courts in the United States."
10. FULLER: "Child Labor and The Constitution," Chap. III.
11. WEMBRIDGE: "Other People's Daughters."
12. SAYLES: "The Problem Child at Home."
13. SAYLES and NUDD: "The Problem Child in School."
14. DRUCKER and HEXTER: "Children Astray."
15. LINDSEY: "The Revolt of Modern Youth."
16. VAN WATERS: "Parents on Probation."
17. THOM: "Everyday Problems of the Everyday Child," Chaps. XVI–XVII.
18. HEALY: "Reconstructing Behavior in Youth."
19. THOMAS: "The Child in America."
20. REEVES: "Training Schools for Delinquent Girls.

CHAPTER VIII

THE EVOLUTION OF PENOLOGY

According to Professor Ellsworth Faris of the University of Chicago, there is good "reason for questioning whether any one inside the primitive group was ever punished, at least by those within his own tribe. In an instinctive way the members of the group are bound together and in the most homogeneous groups they do not punish each other. Present-day people of some uncivilized tribes do not punish their children." During a residence of several years on the upper Congo River in Africa, Professor Faris did not see a single case of the punishment of a child. There is no stimulus to the commission of antisocial acts in a small, homogeneous community where outside influences do not enter. If by chance such an act is committed, there is no remedy. The situation is similar to one in which a person breaks or damages his own property by accident; it is to be regretted, but there is no remedy except the almost mechanical expression of an imprecation.

If punishment did not begin inside the group, did it find its origin in conflicts with the enemies of the tribe? Westermarck explains punishment as arising from an instinct of resentment, usually "sympathetic resentment," combined with some strong emotional state of mind. Hobhouse finds a basis for punishment "in the concepts formed when the evil effect of the offence is seen."

Professor Faris believes that it is

> . . . unnecessary to go beyond the simple, inherited reaction of all gregarious animals of the carnivorous type, all females with young, and even insects of the social kind as bees and wasps. There is a natural, inherited reaction of defense against the attack of a stranger or an enemy. The savage fights any one from the outside who has attacked his child or his brother or his father or any of his kindred or clan, and does so just as a hive of bees or a nest of hornets responds to a disturbance of a hostile nature.

For a situation where formal punishment can exist, there must be a

> . . . society that has grown so complex that there are varying degrees of relationship and of fellow-feeling . . . There would be those who would wish to see the offender destroyed. There would also be those who would defend his cause. And there is necessary in any real punitive situation an impartial umpire who has interests on both sides.
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> Here, then, is the solution to the problem of the origin of punishment. So long as there are just two groups, no punishment could take place, but when there

are three or more groups, the attitude of formal punishment becomes a natural one. There is the group to which the offender belongs, the group which he has attacked, and a third which is relatively neutral.

Our institutions of justice illustrate this threefold grouping. There is the counsel for the defense, representing the rights of the defendant to a fair trial; there is the prosecuting attorney whose official duty it is to describe the offence in the blackest colors; and there is a third necessary group represented by the judge and the jury.

Therefore, according to Professor Faris, "punishment is a practice that has arisen out of group activity and owes none of its origin to private vengeance or the rule of force within the group. Punishment is the expression of the clashing of groups; with a buffer-group to lessen the shock. It is a phenomenon of social psychology, and can only be approached intelligently from the social point of view."[1]

PENAL METHODS OF THE MIDDLE AGES

Among the Teutonic nations it was assumed that for a crime to have been committed, an individual must have suffered injury. Thus the placation of the injured party was the objective of the oldest laws. Crimes were met by restitution not by punishment. Every sort of injury was atonable by a money compensation paid to the injured man or his relations. The fine depended upon the damage done and the rank and importance of the person injured. A front tooth cost 6 to 8 shillings. The wergild of a king was 7,200 shillings and in addition a similar amount payable to his people. A thane (baron) cost 1,200 shillings and a ceorl (husbandman) cost 200 shillings. These murder fines were heavier than they seem when we remember that 5 pence would buy a sheep and 30 pence an ox. The cost of a laborer would be the price of a small herd. Frequently the fines were never paid. The offender might be slain, might escape and live as an outlaw or be sold into slavery.

Clearly from the nature of early Saxon society, elaborate penal machinery had no place. The freemen atoned with fines when possible, and by slavery, mutilation, outlawry or death when they could not pay. Gradually the crown or central government grew in power and was able to enforce obedience and order, at any rate in the neighborhood of the king's residence.

About the tenth century, after the ending of the Danish troubles, and in the eleventh, under the Norman rule, the king was strong enough to extend his power and protection. In the twelfth century the old system began to give place to one under which the king exacted punishment and tribute, which he administered and collected through itinerant judges, sheriffs and other officers. The heavy fines imposed on places and people became an important source of revenue to the crown and to the barons and lords of the manor to whom rights of jurisdiction were frequently delegated. The idea of damage to the individual was lost in the greater trespass committed by the offender against the peace, the code and the king.

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[1] FARIS, The Origin of Punishment in *The International Journal of Ethics*, vol. XXV, pp. 56–67, October, 1914.

Up to the middle of the twelfth century some counties were without public jails, and Henry II commanded their construction in 1166. These early prisons were places for the safe custody of persons accused. They would have to wait till the king's judges came to hold the next court, which might be a long time. Many would die of want or disease before the justices were ready to try them.

Meanwhile the prisoners and their families were to be kept at their own expense. They were well fed if they had the means and might be starved if they had not. Those who survived were finally tried. For treason an offender might be broken on the wheel, while for the common criminal there were hanging and ghastly mutilations.

By the time of Edward I, we find imprisonment, but as a general rule only preparatory to a fine. The prisons were used as "squeezers" to extort fines. In Henry III's reign the wrongdoer rarely went to prison. The justices did not wish to keep the offender in prison; they wanted to make him pay money.

The sixteenth century showed no advance. Torture developed after 1468 and under the Tudors the rack was ever ready to extort confessions. The common criminals were treated with great severity. In 1530 an act was passed by which all poisoners were to be boiled alive. Burning was the penalty for a number of offences and continued legal until 1790. Ordinary hangings were exceedingly numerous.

About 1552 the London City authorities selected what had been a palace at Bridewell for locking up, employing and whipping beggars, prostitutes and nightwalkers. Later, similar detention places were also called Bridewells. In 1597 the authorities planned Houses of Correction, and in 1609 these houses were ordered to be built in every county. They became practically common jails, though they lasted in name till 1865. John Bunyan, during his twelve years' confinement in the seventeenth century, was allowed to work for his family for a large part of the time in tolerable surroundings. The prisoners hung collecting bags out of their windows on Sunday mornings. Fox, the Quaker, described conditions in 1657. A statute of Charles II gives evidence as to how felons fared: "There is not yet any sufficient provision made for the relief and setting to work of poor and needy persons committed to the common goal for felony and other misdemeanors, who many times perish before their trial, and the poor living there idly and unemployed become debauched and come forth instructed in the practice of thievery and lewdness."

The prisons of the eighteenth century were very much like those before that time, but we know more about them through the work of John Howard. That "grim, conscientious Puritan went where the ruling classes neither cared nor dared to venture." Besides the filth and stench, there lurked the dreaded typhus or jail fever, which was spread mainly by the vermin.

In 1522 at the court at Cambridge many of the knights and gentlemen attending caught the infection. In 1577 at Oxford "all that were present, almost every one, within forty hours died." Much the same happened at Exeter in 1586 and at Taunton in 1730, and some hundreds perished in both places. In 1750, "the Lord Mayor of London, some of the aldermen, two of the judges, the under sheriff, many lawyers and a number of lookers-on, died of the jail distemper." Howard asserted that in 1773 to 1774 more people died from the jail fever than were executed in the kingdom.

The number of capital offences was enormous. Onward from 1688 they steadily increased, until, in theory, there were more than two hundred. Rough and brutal as the people were, they would not enforce them, and the death penalty was used in not more than twenty-five to thirty classes of offences.[1]

THE ORDEALS

There were many ordeals in medieval England. There was the consecrated barley cake, which was supposed to choke a perjurer if he tried to swallow it; when mouth and throat were dry from fear or excitement this was quite possible. There was a test by immersion, in which the accused had to sink over seven feet. A rope was attached round the body, and an archbishop in the ninth century gave express directions for the rescuing of those who, by sinking, were declared to be innocent. There was a test tried with hot water, in which a stone had to be picked up out of boiling liquid without the arm being scalded. There was a test, to pass which the hand had to be inserted into a glove of hot iron without being burned by it. There was a test in which the suspected person must walk through flames without being scorched. There was also a test which consisted in having to walk over nine red-hot ploughshares, blindfolded and unseared.

Perhaps, however, the best-known ordeal was that which was worked out with a heated iron bar or ring. This generally weighed three pounds, and had to be carried for a distance of nine times the length of the bearer's foot. His hand was then bound up and left alone for three days. At the end of the period it was examined, and if found clear and free from suppuration the accused was acquitted.

[1] Adapted from Ives, "A History of Penal Methods," pp. 1–19, London, 1914.

Doubtless, in deeply superstitious times the ordeals, with their solemn prayers and incantations, were fairly effective. But yet they do not seem to have been altogether trusted, at any rate in the later period, since even those who passed successfully through them were obliged to quit the country within forty days. Most people, however, who underwent ordeals had been arraigned by twelve knights of the county (who thus resembled a Grand Jury) and were already under grave suspicion; the ordeal, then could only say not proven.

After incurring the disapproval of many Popes, the ordeals were condemned in 1215, and priests were forbidden to pronounce their blessing upon them. The ordeals were abolished in England in the reign of Henry III, and the juries took their place.

Another species of ordeal was the wager of battle. This very ancient mode of trial was introduced into England by the Normans under William I. If a man made a charge against another, and proofs of guilt were not obvious and overwhelming, the latter could demand trial by battle, unless the complainant was over sixty years old or was sick and infirm, or labored under some physical disability, in which case he might choose the ordeal. Priests, infirm persons, and women might have champions to represent them. The knights fought with their usual weapons, the plebians with staves forty-five inches long, which were tipped with iron heads shaped like rams' horns. They were to be bareheaded, barefooted, and close-shaven; and they fought till death or surrender, at first with the clubs, and afterwards, killing as best they could. If the accuser were defeated he could be committed to jail, as a slanderer, but was not to lose life or limb; he was, however, fined sixty shillings and lost civil rights.

If the person who was accused—were he knight or peasant—yielded, he was then hanged or beheaded as being guilty. If, however, he prevailed in the combat or defended himself till the stars came out, he might leave the field as being acquitted, unless the justices desired to put him on trial for something else, which they occasionally did.

The custom of trial by battle, along with all other kinds of ordeals, dropped out of practical usage during the thirteenth century, but continued the law for five hundred years afterwards. In 1818 it was recalled into action. One Abraham Thornton was strongly suspected of having outraged and murdered a girl, Mary Ashford. Although he was acquitted when tried by a jury, he was immediately accused by her brother and heir-at-law, and claimed to defend by the wager of battle. The fight was refused by the plaintiff, and shortly afterwards there was passed "An Act to abolish Appeals of Murder, Treason, Felony, or other Offences . . . and Wager of Battle," so it could not be claimed again.

Summary and "Poetic" Punishment

As the poor human body has always been sensitive, so at the promptings of the revenge instinct it has always been assailable and most readily beaten. The serf, the varlet, the vagabond, the lunatic and the petty offender were all whipped with uncertain severity; most likely until the victim was bloody and until the operator was tired and felt he had earned his fee. The whips were of all sorts and sizes. They are frequently represented as having three thongs; Titus Oates was flogged with a whip of six thongs. A lash of transportation times is described which had a thick leather thong bound with wire. The cat-o'-nine tails is alluded to in the eighteenth century.

Both men and women (the latter up to 1817) were flogged in public, being either tied up to a post, or fastened behind a cart and thrashed along the road. Perhaps the most obvious thing to do, next to flogging an offender, was to exhibit him to the people. The country was immeasurably more provincial than it is now in these times of travel, and to be rendered infamous in one's village or neighborhood was no trifling penalty; and so we find the stocks set up in the towns and villages, and, for more serious misdemeanours, there was the pillory or neck-catcher.

This well-known instrument was made of all shapes and sizes, and varied from a forked post or a slit pillar to what must have looked like a penal dovecote made to hold several prisoners. The convicted were sometimes drawn to the place of punishment on hurdles, and might be accompanied by minstrels on the way. The hair of the head and beard was shaved off, and sometimes the victims were secured by being nailed through the ears to the framework, and might also be branded. With faces protruding through the strong beams, and with hands through the holes, secured and helpless, they were made to stand defenseless before the crowd as targets for any missiles that might be thrown. To those who were hated this was a serious ordeal, for they would be so pelted and knocked about by the mob as to be badly wounded, if not actually done to death. At length those who had stood their time were released, and those who had had their ears nailed would be cut free, and then they might slink away from the scene of shame, or be carried back to prison to endure additional punishment. The pillory was abolished for all offences except perjury and subornation in 1816, and altogether in the year 1837.

Before leaving the middle ages we must consider the so-called poetic punishments. These were the spontaneous reprisals with which the community strove to repay the criminals in kind, and by which, if strict retaliation were seldom attainable, our ancestors succeeded in contriving many chastisements that were, at any rate, "associable equivalents." Of these a few examples may be given. For instance, a baker who sold loaves which were short of weight was shown with the bread tied round his neck. A fishmonger who had been selling bad fish was paraded with a collar of stinking smelts slung over his shoulders. A grocer who had been selling much-adulterated spices was placed in the pillory and had the powders burned beneath his nose. A heretic who had advocated strict Judaism was sentenced to prison and to be fed entirely upon pork. The Inquisition attached two pieces of red cloth in the shape of tongues to the breast, and two more upon the shoulders of a false witness, which were to be worn for life. Indeed, badges and crosses were often imposed, and were in these times a dreadful mark of Cain. In 1505 two men were sentenced by an archbishop to wear a faggot (or a badge representing one) upon the left shoulder, to show that they stood in danger of flames. It would seem they did, for they were burned alive in 1511.

Louis IX ordered that those who had spoken indecently should have their tongues pierced and their upper lips cut away. Pope Innocent IV remonstrated with the king against this barbarity. The mutilation of the tongue was a punishment known and inflicted in England for blasphemy. In 1656 one James Nayler, "the mad Quaker," had his tongue pierced with a hot iron for claiming to be the Messiah. He was also whipped at the cart's tail, and kept in prison two years. A drunkard was sometimes walked about in a barrel, his head protruding from the top and his hands from two holes made in its sides.

For the village scold, they kept the bridle of iron, which contained a flat (and for the unfortunate witches occasionally a spiked and painful) gag that went into the mouth and pressed down on the tongue. They might also be placed in the local ducking chair and immersed in water. A remarkable illustration of the intensely individual and personal aspect of primitive penalties is furnished where the prosecutor had himself to execute his assailant, "or dwelle in prison with the felon unto the time that he will do that office or else find a hangman.[1]

Capital Punishment

In a brutal age, punishments were brutal. Branding, mutilation and flogging were inflicted for the less serious crimes. For minor offences the stock and pillory and fines were the methods commonly used. Thirty different ways of taking human life are described by Wines.[2]

The last century has seen the disappearance of almost all punishments that inflict bodily suffering or mutilate the body in any permanent way. Whipping is legal as a punishment in only two states, Delaware and Maryland, and is not generally used in either. Corporal punishment as a means of family and school discipline has been declining for a good many years and is used only for rather exceptional and persistent violations. Fines and imprisonment have become the customary penalties for minor and serious crimes, which do not warrant capital punishment. The death penalty is now ordinarily inflicted only in the case of treason and first-degree murder, and the methods used are assumed to be as swift and painless as possible. Public executions have been generally abandoned. Undoubtedly, the chief reason for the abolition of bodily suffering is to be found in the growth during the last century of humanitarian sentiments. The development of democracy and modern means of communication have also contributed to bring about the same result. Brutal punishments were most in favor when the social distance between those who imposed the punishment and those who suffered it was very great.

It was in England during the latter part of the eighteenth century and the first part of the nineteenth that the use of the death penalty reached its climax. In 1780 the penal code of England embraced 240 capital offenses and Blackstone mentioned 160 crimes as punishable by death in his day. It is said that in the reign of Henry VIII, 72,000 executions took place. Many of the offenses for which these victims were sent to the scaffold were of a trivial character. The death penalty was the universal panacea for crime and it was applied to murderers, thieves and petty offenders indiscriminately. As late as 1820 in England, the following acts were punishable by death: gypsies remaining in the country one month; unlawfully killing, hunting or stealing deer; unlawfully taking or stealing fish out of any pond; injuring Westminster or other bridges; cutting down or destroying growing trees; and sending threatening letters.

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[1] Ives, "A History of Penal Methods," pp. 21–25, 54–57, London, 1914.

[2] Wines, "Punishment and Reformation" (edition revised and enlarged by Winthrop D. Lane), pp. 50–71, Thomas Y. Crowell Company, 1919.

Despite the severity of punishment, crime increased, and increasing the number of capital offenses seemed ineffective as judged by results. It is a matter of record that the first counterfeit note on the Bank of England was presented a few days after forgery was made a capital crime. Pickpockets plied their trade in crowds gathered around the gallows at the hanging of a fellow pickpocket. An English chaplain declared that of 167 men to whom he had ministered on the gallows 161 had attended one or more hangings.

Another result of the severity was that an increasingly large number of persons who were in fact guilty escaped punishment because of the reluctance of juries and judges to impose the death penalty. In 1830, a petition with the signature of over 1,000 bankers was presented to Parliament, in which it was stated that they had found by experience that the infliction of death, and even the possibility of death, prevented the prosecution, conviction and punishment of the criminal and endangered the property it was intended to protect. They, therefore, asked that forgery be removed from the capital cases.

Early in the nineteenth century Sir Samuel Romilly began his crusade with an attack on the laws against stealing, which were so severe that juries would not convict. There was a law of Elizabeth which made of stealing a capital offense, but Romilly could find only one instance where a convicted offender had suffered death. The reformers insisted that certainty of punishment was a greater deterrent than severity. Mrs. Elizabeth Fry reinforced this argument by telling from her experience in visiting the prisons of the responsiveness of the prisoners to kindly treatment.

Romilly failed to get any important reduction in the number of capital offenses before his death in 1818. His work was carried on by Sir James Mackintosh, who obtained and presided over a Commission of Enquiry. The knowledge elicited by the commission was the foundation for the long series of laws by which between 1823 and 1861 the number of capital offenses was reduced until murder and treason alone were left.

The attitude to punishment that was based upon such severity is illustrated by Dr. Samuel Johnson's protest against the removal of executions in London from Tyburn Place to Newgate Prison. He declared that "executions are intended to draw spectators; if they do not, they do not answer their purpose. The old method was most satisfactory to all parties; the public was gratified by a procession, the criminal was supported by it. Why is all this to be swept away?"

Such an attitude is entirely foreign to the point of view of the present day. Even those persons who, under the excitement of the supposed existence of a crime wave, demand more severe penalties, would hesitate to urge the revival of the cruel spectacle of a public execution. Electrocution has been substituted for hanging in a number of states because it is supposed to be more swift and painless. For better or for worse the modern world has outgrown the cruel punishments inflicted in earlier centuries. Our punishments are fewer and less picturesque, but they are more humane, at least in regard to bodily suffering and their use as public spectacles. Whether the mental suffering in imprisonment and the hardships of the members of the prisoners' families are in reality less severe cannot be determined. There are no common denominators by which physical and spiritual penalties can be compared. Modern cruelty is of a more refined kind.

Warden Lewis E. Lawes of Sing Sing Prison contends

> . . . that the death penalty is a relic of savagery, perpetuated by custom and in ignorance, maintained by false assumptions and consummated in a killing that is legal in name only; it is illogical and inconsistent with religion and morality; it condones in an act of an agent what would be murder for an individual; it carries out in secrecy what would be revolting in public; it is man-made and fallible and, therefore, subject to gross miscarriage of justice; it is ineffective and sets an example for murder; it violates the teachings of Jesus and the conscience of enlightened mankind.[1]

Sutherland points out that the importance of the death penalty is due to "the fact that it is the point of conflict between those who favor revenge or retaliation, and those who look upon the criminal as a problem requiring scientific understanding and control based on this understanding." In other words, the wider use of the death penalty means a return to earlier and cruder methods from which we have only emerged in the last century. Camouflage the arguments for capital punishment at the present time as you please, you are urging the revival of the punishments of the Middle Ages when penalties were the most cruel of those used during recorded history.[2]

BANISHMENT AND TRANSPORTATION

"The outlaws were the ancestors of the convicts, and the wilderness was the first penal colony." There was a time when in England the forest stretched far and wide encircling all the towns and villages. Up to the fourth century the population of Britain was under a million, and, for another thousand years and longer, it totalled less than half the number of persons living in London. The population in the reign of Henry VII was about 3,000,000. The two cities of London and Westminister had about 60,000 inhabitants. They were joined by a country road lined with trees.

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[1] LAWES, "Man's Judgment of Death," G. P. Putnam's Sons, 1924. The quotation is from a pamphlet published by the League to Abolish Capital Punishment.

[2] SUTHERLAND, "Criminology," p. 376, J. B. Lippincott Company, 1924.

The wandering population was very large. Along the roads went traders with pack horses, pedlars, poor students, pilgrims seeking shrines, laborers, the usual tramps and loafers. Into this stream the outlaws were absorbed. Many offenders were allowed to leave the country. Most of them would make for the narrow crossing from Dover. From being a common custom, such migrations were to some extent prepared for. At Dover there was a hospital for poor priests, pilgrims and strangers. Pilgrims and travellers were assisted by pious persons upon the road, poor travellers could join other parties and work their way. The dishonest and criminal would pose as pilgrims or rob people when they dared.

There was another way of dealing with criminals. They might be made into galley slaves. The original use of the galley was in the Mediterranean. The Eastern nations devoted their Christian slaves or captured prisoners to this use and the Northern powers returned the injury. Convicts in France were put in the galleys. Queen Elizabeth appointed a commission to arrange that prisoners, "except when convicted of wilful murder, rape and burglary," might be reprieved from execution and sent to the galleys, which were considered more merciful than ordinary civil punishments.

When America was discovered a new outlet was provided. In 1597 a measure was passed sanctioning transportation. It was called "an act for the punishment of rogues, vagabonds and sturdy beggars." Early in the seventeenth century, the new lands of the West began to be exploited energetically.

In 1717 an act of Parliament established transportation to America on a much extended scale. In 1767 another act was passed for the more speedy and effectual transportation of offenders. Later the numbers transported were greatly increased by prisoners of war and rebels. The demand for laborers in the colonies led to the seizure of persons by force and their shipment to the colonies. By 1650 press gangs were numerous in England. Legislation to prevent kidnapping was not very successful. Finally, the demand for laborers was met by Negro slavery. In 1671 there were 2,000 slaves in Virginia as compared with 6,000 white servants; in 1758 there were 120,000 slaves in a white population of 173,000. Just before the Revolution, Great Britain had 192 ships engaged in the trade, and they were transporting 47,000 annually.

The evidence as to the actual condition of those transported to America varies considerably; many, if not most, convicts desired it, while others dreaded it more than death. Although the prisoners underwent great hardships, yet the conditions of those who came later were largely determined by their personal qualities and by those of their masters. In consequence, many did well, and, out of the 50,000 or more, some rose to attain high honor and position.[1]

TRANSPORTATION TO AUSTRALIA

The outbreak of war with the American colonies in 1775 had far-reaching consequences for all English prisoners. With the outlet to the West closed, the prisoners at home increased and no one knew what to do with them. Some very wild proposals were made. West Africa was considered as a place for a convict settlement, and in 1782 three hundred convicts were sent there to serve as soldiers. All but three had disappeared in 1785. Meanwhile the prisons at home were packed with prisoners. The county authorities were urged to enlarge the jails, but apparently they paid little attention to the order.

Prisoners were also kept upon old sailing vessels, generally men-of-war, permanently made fast in rivers or harbors, known as "hulks." Those who were able to work were employed on shore in various dockyard tasks, such as digging and dredging. These prisoners were as usual sadly neglected. For some thirty years the hulks received a large proportion of the condemned and were used until 1858.

In 1786 Australia (seen and examined by Captain Cook in 1770) was selected as a place for the transportation of criminals. Captain Arthur Phillip commanded the first fleet, consisting of six transports, escorted by two vessels of war, and accompanied by three store ships. It carried 564 male and 192 female prisoners with horses, cattle, seeds, implements and tools; it sailed in May, 1787, and after a voyage of eight months landed on the site of the present city of Sydney.

The difficulties of the new settlement were great and famine threatened the colony before relief came in June, 1790. Prisoners continued to accumulate at home and a second fleet was planned which reached Australia in time to save the original settlement. The convicts on this fleet had undergone horrible sufferings, due to rascally contractors, who had been employed in the African slave trade.

In Australia, for a long period, the prisoners themselves were the population, the only others present were the British officials sent out to govern them. As the Australian colony increased in wealth and prosperity, it began to attract a stream of free settlers. The free settlers refused to fraternize with the convicts and social friction developed. Gradually the numbers of free immigrants crept up to and ultimately surpassed those of the convicts emancipated. The freemen resented the idea of being known as a convict settlement. A league was formed against it in 1830, and by 1835 the colonial fight was in full blast.

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[1] IVES, "A History of Penal Methods," pp. 97–123, London, 1914.

Another danger threatened the practice of transportation—the fear of the English Government that it would not be penal enough. During the first years the great distance was regarded as a sufficient punishment in itself. But as it grew more familiar, with intercourse between England and Australia more frequent, transportation seemed to become less dreadful.

No exact enumeration of the numbers sent to Australia can be made, but it certainly amounted to more than a hundred thousand. Transportation may have been for many convicts a fresh start, especially in the early years. But there were terrible abuses connected with the practice. It was carried out in a brutal age and by rough men remote from effective public control.

In Australia there developed a number of penal settlements, including Macquarie Harbor and Port Arthur in Tasmania and Norfolk Island. Norfolk Island was the worst.

Port Macquarie was a deep inlet along the western coast, about two hundred miles from Hobart Town, and was used as a penal settlement from 1821 to 1833. Approach over land appears to have been impossible because of marshes and mountains. Only eight or nine ever escaped except to perish of hardships. The men worked at felling timber and dragging logs, they labored in irons and were often chained together in gangs. The convicts were flogged with the heaviest sort of whips and were also punished by being compelled to sleep on wet rocks in damp clothes and fetters; occasionally some of them drowned themselves. "There were gloomy yards and thick-walled prison buildings where the main body slept, and there were solitary cells for punishment. The authorities had learned the art of breaking the prisoners' minds as well as their bodies; the more refined nineteenth century tortures of cells and treadwheels were added to the whips and fetters of the earlier periods."

Port Arthur was located on the eastern coast of Tasmania and was used as a penal settlement from 1830 to 1877. Next to Norfolk Island it was the largest of the colonial prisons, having an average population of over a thousand inmates. Escape was difficult by land or sea, "yet men did attempt to get away, preferring to take the chance of being eaten by sharks, or even, under stress of famine, by one another in the bush to the cruelty at the settlement."

At Port Arthur large and extensive quays and solid stone structures had been built by the convicts. "It was a massive prison with walls and buildings containing all the nineteenth-century accessories for degrading the inmates. The prisoners wore a dress of yellow with leather caps marked 'Felon' at back and front. Most of them were in irons, which were usually of about 7 lb. weight, and they were occasionally made fast to a log of wood by a chain about 3 ft. long attached to their leg-irons. Some of them were even chained to the wall."

Norfolk Island was about a thousand miles northeast of Sydney in the Pacific Ocean. It was first colonized in 1788 by nine men and six women from the first fleet; about 1806 it ceased to be a penal settlement. In 1826 the place was reoccupied with fifty convicts and a guard of as many soldiers, and, during the next twenty-five years, "it became the largest and vilest of the penal colonies." The discipline appears to have been unusually severe and brutal even for those days, and several times the convicts rose in rebellion only to be beaten back by bullets and bayonets and have their leaders hanged.

In 1840 Captain Alexander Maconochie was placed in charge. He was a man with many reasonable and enlightened views. His methods were considered by the authorities, however, to be quite out of keeping with their views and he was removed in 1844. During his four years he introduced his system of marks so successfully that he declared: "I found Norfolk Island a hell, but left it an orderly and well-regulated community."

At Norfolk Island, they employed gags, bridles or headstalls, and an engine of torture known as the "stretcher," which was an iron frame some six feet by three, not unlike a bedstead, the sides being kept in position by round iron bars twelve inches apart. Upon this frame the victim was fastened, the head extending over the edge and without support. One man is said to have been placed upon it in a dark cell and left for twelve hours; he was found dead.

Another method was to suspend chained prisoners by one hand; and one of the most dreaded penalties was to sentence a man to work—often with unhealed wounds from recent flogging—in the Cayenne pepper mill, the fine stinging dust from which was especially maddening.

These penal settlements flourished in times when transportation had lost its first character and had become penal servitude; when freemen, rather than convicts, were thought of as settlers, and when the Home Government wanted prisons rather than lands and colonies for its criminals.[1]

The Origin of the Cell Prisons

The end of the eighteenth century opened up an eventful period in prison management. John Howard (1726–1790) had been exploring the jails and prisons of England and Europe; Elizabeth Fry (1790–1845) was visiting the women in Newgate; and Romilly (1757–1818) was striving to reduce the number of capital offences, of which there were over two hundred. In fact, a little band of earnest men and women, zealous reformers, had at length compelled the ruling classes to look into the state of the prisons.

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[1] Adapted from Ives, "A History of Penal Methods," pp. 123–170, London, 1914.

They found simply dustbins of demoralization and pest-houses from which all kinds of evil sprang, and it was this well-intentioned, no doubt necessary, protest against the old order of things that set on foot a series of experiments on living animals—the prisoners—which, while they removed a good many of the then existing scandals and cruelties, yet inaugurated a machine for the infliction of suffering, compared with which the old barbarities were short and relatively merciful.

The old prisons were crowded, squalid, germ-laden, and filthy; the new were to be clean and sanitary. In the old buildings debauchery and open vice were coarse and rampant; amidst the damp and miasmatic darkness would be heard the oaths and obscenities of the most abandoned of both sexes, along with the jingle of their heavy fetters, which sound might be checked from time to time by the sharp slashing of the gaoler's whip. The new prisons were collected cells; they were huge tiers of tombs, in each of which a solitary inmate lingered and often died. Deep silence reigned, but sometimes ghostly figures, ever-guarded, and wearing masks, lest they should possibly recognize one another, were hurried through the cellar-like passages, not daring to turn their heads to look around them, and scarcely to lift their eyes for a covert glance if another mask should shuffle swiftly by. As the more sanguinary and violent penalties began to shock the public conscience, imprisonment became the general punishment, and prisons passed from the detention-dens they had been into places actually for tormenting their inmates by a variety of ways and means concealed under the name of discipline. With primitive notions and little understanding of the real, various, and complex nature of all the many acts that are called criminal, the reformers classed all offences as being the outcome of mere "sinfulness," and, as a corollary to this view, they diagnosed the broad and simple remedy for crime to be "repentance" artificially produced.

Very much as the religious zealots of the dark ages strove to make heretics conform to their views by the infliction of torture, so these eighteenth- and nineteenth-century prison managers endeavoured to force the captives to reform by suffering. They attacked "Crime" as a concrete entity in the person of the offender, but left untouched those deeper and far-reaching causes from which it must inevitably have sprung.

The penitentiary system is said to have been begun in Rome. Pope Clement XI (1700–1721) as early as 1703 erected the prison of San Michele on cellular principles.

The idea was subsequently taken up in Milan, where a prison was built upon the San Michele model, and it has been claimed that the experiments which were tried in Belgium, at Ghent, and spread thence over the United States, owed their initial inspiration to the prison begun at Rome. But in all probability the then untried solitary system—a phase in prison management in many parts of the world through the last century—was the natural reaction against the indiscriminate herding together which had lately been exposed. In England, Howard had a good deal to do with its introduction and, apart from other evidence, this point is borne out by the inscription, which was cut deep on the foundation stone of the New Baily, Manchester, one of the many prisons which were the outcome of his revelations.[1]

PENITENTIARY EXPERIMENTS

One of the consequences of Howard's work had been the erection of a number of jails on the cellular system in different parts of England. The reformation-by-solitude theory was hailed as the Magna Charta of prison management. Once make prisoners think and they will see the error of their ways.

To give effect to the new theories Millbank was commenced in 1812. By 1821 a huge and gloomy, many-towered prison had been erected. It contained nearly three miles of corridors and had cost nearly a half million pounds ($2,500,000). It was built in the form of a thick-spoked wheel.

At first it was a plaything of society and often visited, but it soon lost its novelty and was left in the hands of a regular committee and the salaried officials. The prisoners were well treated, though from the beginning the construction of the building aimed at solitude and separation.

From the quality of the human material in the institution and from the nature of the experiments practiced upon them, much friction developed and repressive measures had to be used. The favorite punishment was the dark cell. Later corporal punishment was inflicted. The main idea was to prevent communication between prisoners. As discipline became more severe, cases of insanity increased so rapidly that the committee interfered.

But the supposed panacea of solitude was widely believed in at the time. A new prison (Pentonville) was being built upon the same plan. Whether separation could be long continued with sanity is, said the committee "a subject of much controversy, and can only be determined by actual experiment. And so philanthropists continued shutting people up, starving them in body, mind and soul, and then expecting reformation."

In 1832 William Crawford (1788–1847) was sent to the United States to examine and report upon the prisons there. He had been secretary to the London Prison Discipline Society and was afterwards appointed an inspector of prisons by the government. The separate system, as used in the Eastern Penitentiary of Pennsylvania, impressed Crawford as the best method.

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[1] Adapted from Ives. "A History of Penal Methods," pp. 171–175. London, 1914.

He returned to England, and in 1839 Parliament provided for the erection of a "model" prison at Pentonville, which was completed in 1842. Within six years, fifty-four new prisons were built in England upon this "model" plan.

At Pentonville the isolation theory was carried out under Crawford's personal supervision. The ruling notion was that prisoners meeting under any circumstances must be avoided. For two years at the beginning, and later for eighteen months, every man was kept in isolation. "Up to 1853 the prisoners wore masks along the passages, they sat in separated pigeon-holes in chapel, even on the treadwheel they were partitioned off, and the newly-invented crank was ground within the cell; each prisoner took an hour's exercise a day, in what has been called a 'triangular den,' surrounded by high gloomy walls.

"The convicts to be subjected to the 'model' discipline were specially selected. The sickly and those supposed to have a tendency towards insanity were carefully weeded out." But in defiance of theories even these prisoners gave way under the stress of solitude. At first a too-vehement chaplain was blamed, but under a milder one the mental breakdowns continued; it was the experience of Millbank over again.

In the decade from 1842 to 1852 the discipline had to be continually modified; in the end the "solitary" was brought down to nine months. When ordinary prisoners began to be received at Pentonville, the rate of insanity flew up fivefold and some even say eightfold.

The problem of providing some employment for prisoners arose as soon as prison reform was undertaken. Sir William Cubitt (1785–1861), an eminent engineer, devised the treadwheel in 1818. Its ordinary form was something like a very wide mill wheel such as is turned by water power, containing twenty-four steps. Each prisoner held on to a wooden bar above his head, and kept on treading as the steps went round. The body, or barrel, of the wheel was usually about five feet in diameter. In early days there were several varieties. One at Leicester was twenty feet across, and the prisoners worked from the inside, but after two fatal accidents, the inside-scramble style was given up.

But the ordinary wheel was not without danger. A man was killed upon the mill in Suffolk, and in another instance a prisoner had his arm torn off by the machine, in each case from that most deadly of all offenses against the "model" system—attempting to speak to an adjacent fellow toiler. Usually little stalls were built upon the wheel, so each man had a little box to himself. Hard as this labor always was, women were set to do it.

The tasks set varied much. At first the prisoners had to ascend a number of steps, ranging from 5,000 to 14,000 feet; in later times the regulation task was 8,640 feet for the day's work. Sometimes the wheel was employed in pumping or grinding, sometimes it accomplished nothing, only going around like a "damnation mill."

The crank, a still more "model" instrument for the cell theorist, dates from a later period, having been invented at Pentonville about 1846. Next to the cell, it soon became the chief "reforming engine" of the "model" system.

The new machine might be compared to a churn in appearance; it was a metal box raised to a convenient height by a support. It had a handle to be turned and a clock-like face upon one side to count the revolutions made. The requisite amount of resistance was secured by a metal band, which could be tightened with varying force pressing inside upon the axle.

The usual number of revolutions required was 14,400 a day at the rate of 1,800 an hour. Other prisons adopted it from Pentonville. At first it had been intended only for vagrants and short-sentence men, but after 1848 it tended to oust other labor altogether.

In 1851 "the murderous tyrant, who has been lifted into the lasting pillory of shame in Charles Reade's 'It Is Never Too Late To Mend,' was made Governor of the jail at Birmingham. In this modern hell upon earth, the cell was the reforming force, the crank its worthy minister, and a merciless martinet was urged to carry out the model system to the very utmost. One is naturally apt to fancy that the great novelist overcolored his tale; but the whole terrible story is preserved in an official record."

Ten thousand revolutions a day were then required at a nominal resistance of five pounds for boys and ten pounds for grown men. If the work was not done, even the scanty prison food would be withheld, and the prisoners were crushed and squeezed and strapped into the punishment jacket.

"The cranks were in cells round a yard, and the victims who had not completed their task were often left there, turning the machine desperately for their very lives—turning and turning after darkness had set in, when the dial of the indicator could no longer be read; so that sometimes, even after the heavy official task was really done, they worked on, making many more revolutions than they had to do; next day, however, these were not counted to them, but all the ten thousand must be done again."

Even this was not all, for the machines were sometimes faulty in construction and false in registration. When they grew heated from the friction of the working, the resistance was greatly increased. Half-starved boys were set to do tasks requiring a quarter of the power of a dray horse, and when they failed they were pronounced refractory. "Thus a fifteen-year old boy—a quiet, neglected, inoffensive creature, who had stolen a piece of meat and was in for three months—was put on a '5-lb. crank,' which was said to have been equal in resistance to one of 20 lb., and because he could never do the impossible task he was starved and jacketed, and put in a black cell and punished, till he broke down and hanged himself in his cell."

Finally, a tardy retribution came. The governor, the prison surgeon and the visiting justices were exposed, and a special government commission investigated the jail. The governor is said to have been condemned to prison for three months, and the Royal Commission went on to examine Leicester prison, where things were found nearly as bad. Daily food had to be turned for: 1,800 revolutions for breakfast; dinner took 4,500; supper another 5,400, leaving 2,700 turns to be done afterward. Many prisoners were nearly starved to death. Once a man was found by the commission to have had only nine meals in three weeks of working days; Sundays all were fed.

Within these prisons were found two or three children aged nine, and a good many of eleven, twelve and thirteen.

Penal Servitude

Refusal of the colonies to receive any more convicts compelled the government to abandon transportation. There had always been a certain number of persons—cripples, half-mad and medical cases—whom it was considered inadvisable to transport. They were mostly kept upon "the hulks, which were in fact, the first prisons employed for convicts, who were neither executed nor transported." A few probably lingered in local prisons.

But the time came when nearly 8,000 convicts had to be disposed of upon English ground and special prisons were erected. The first of these was opened at Portland in 1848; the next was Dartmoor, which had once held some thousands of French and American prisoners of war, and which was repaired and reoccupied in 1850; Chatham came later in 1856.

The first penal servitude act was passed in 1855. It abolished all sentences of transportation of less than fourteen years' duration, and, recognizing that the new punishment was to be far more penal, it made four years correspond with seven years beyond the seas. In 1857 came another act, which did away with transportation altogether; made the sentences of the new punishment as lengthy as those of the milder one, but fixed the minimum sentence at three years.

The general plan of the new system consisted of three stages: (1) twelve months of strict cellular confinement; (2) associated and chiefly outdoor labor on public works; (3) conditional release for a period of remission earned by hard work and good conduct, upon ticket of leave, which was liable to revocation. In 1853 the twelve months' cellular confinement was reduced to nine, and there it remained for nearly half a century.

The next stage was that of labor on the public works: at Portland the convicts built the great breakwater, at Dartmoor they reclaimed land from the bogs, at Chatham they dug huge docks out of the mud, and the clay was carried off in cars drawn by an engine. It was a common practice for men to throw themselves beneath the wheels so fearful was the discipline, so absolutely unendurable became their lives. In 1872 there were reported no less than seventeen cases of prisoners wilfully fracturing their arms and legs under the engine. The prison surgeon reported that "they were of so severe a character that amputation was immediately necessary in most cases, as the limbs were so badly mangled as to preclude any hope of recovery."

Before the commission of 1879, the governor was asked if any measures had been taken to prevent these mutilations, and he replied: "Yes, we took severe measures; a great many men were flogged, and we took precautions. We did not allow them to be near the engines. A great many of the men who mutilated themselves were afterwards flogged." And then he added a sentence which reveals the spirit of the place. "There was no reason why they should not be flogged because they had only mutilated an arm or a leg."

There is also abundant official evidence that the prisoners were very insufficiently fed to perform the heavy kind of work they had to do. Sanitary arrangements were very bad and the regulations were arbitrary and absurd.[1]

THE ENGLISH PRISON SYSTEM

The eighteenth century and the first half of the nineteenth witnessed in England by gradual progress the abolition of mutilation, the stocks, the pillory, and of transportation or banishment, and the restriction within narrow limits of the death penalty and flogging. During the same period the principle had become established that imprisonment should mean not merely compulsory detention, but detention combined with hard labor and other punitive conditions. Consequently, for the last seventy-five years, "prison" and the imposition of fines have been the usual penalties for law breakers. In case the offender cannot pay the fine, imprisonment follows by default.

By 1850 prisons had come to be divided into two classes: (1) convict prisons containing offenders committed for the longer sentences, known as "penal servitude"; and (2) local prisons for those sentenced for shorter terms. The convict prisons were under the direct control of the central government, while until 1877 the local prisons were administered by the county justices of the peace and by municipal corporations. In 1865 an elaborate code of rules for the regulation of prisons was established, but in a large number of instances these requirements were not observed since the actual administration remained in the hands of local officials.

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[1] Adapted and quoted from Ives, "A History of Penal Methods," pp. 176–193; 201–211, London, 1914.

Accordingly, the government determined to assume the direct administration of the local prisons and this was done by the Prison Act of 1877. The local prisons thus came under the direct management of the board of prison commissioners, who are under the authority of the Secretary of State for Home Affairs. Commissioners are appointed on the recommendation of the Home Secretary and he, also, appoints the chairman. The number of commissioners must not exceed five. An attempt was made to retain the interest and cooperation of the local authorities by the use of visiting committees of justices to whom some powers were assigned. This attempt was to a considerable extent a failure, and since 1877 prison administration has been almost entirely centralized.

The reasons for the change were two: (1) the application to all prisons of a uniform system of punishment; and (2) greater economy in public expenditure secured by a reduction in the number of prisons. After the change was made the number of local prisons was reduced from 113 in 1877 to 59 in 1885. The new system continued without modification until 1898 when a new prison act was passed. The reforms made at that time were the result of a persistent agitation by the press and on the platform, which led to the appointment in 1894 of a departmental committee on prisons. The recommendations of the committee, made in their report in 1895, were only partially adopted in the Prison Act of 1898. This act and the 1877 act still govern the treatment of all prisoners and prescribe the duties of the officials in charge.

In addition to local and convict prisons, other kinds of penal institutions have been established from time to time. These comprise the State Criminal Lunatic Asylum, the inebriate reformatories, the Preventive Detention Prison and Borstal institutions. Except the criminal lunatic asylum, all these institutions are under the prison commissioners, subject only to the authority of the Home Secretary, and to the cooperation of certain committees, to whom is delegated work connected with the supervision, discharge and after care of inmates.

The Secretary of State for Home Affairs is the responsible head of the prison system, but in practice most of the ordinary administration is done by the prison commissioners. The Home Secretary is not only one of the principal members of the cabinet but also he has many diverse functions. Unless he has some special interest in prisons and their improvement, he is unlikely to interfere with the proposals or policy of the commissioners. Parliament has an opportunity to discuss prison administration annually when the estimates are presented, but this occasion is seldom made use of and the debate is usually of a routine character. About the only occasions on which the House of Commons has seriously considered imprisonment during the last twenty-five years have been in connection with the Prevention of Crime Act in 1908, the Criminal Justice Administration Act in 1914, and the treatment of political suffragists, conscientious objectors and other political prisoners. The neglect is a measure of the amount of interest taken by the public at large in criminal offenders.

The prison commissioners appoint the "subordinate officers" in every prison. This term includes all prison officials except the governor, deputy governor, chaplain, visiting minister, medical officer and matron, who are appointed, as are also the inspectors of prisons, by the Home Secretary. Probably in the great majority of cases the commissioners nominate the higher officials and recommend their promotion and dismissal.

One remarkable circumstance has had a great deal to do with the supremacy of the commissioners over the administration of the service. During the whole period from 1877 to 1921, there were only two chairmen, and both of these men were persons of a dominating character. They were not chosen by their colleagues, and the body over which they presided is one of only three or at most four members besides the chairman, and the tenure of these members has been short as compared with that of the chairman.

The first chairman, Sir Edmund Du Cane, had already had long experience as director of convict prisons, and as inspector general of military prisons, when he took office in 1878. Sir Edmund Du Cane was succeeded on his retirement in 1895 by Sir Evelyn Ruggles-Brise, who had been on the commission since 1891 and remained as chairman until the close of 1921. During that period the other places on the commission have been filled by twelve different gentlemen. These commissioners have usually been selected from the higher administrative staff of the Home office, the prison governors, and the prison medical officers. The present chairman, appointed in 1922, is Mr. M. L. Waller, who has served as a commissioner since 1910.

In the performance of their duties the commissioners are assisted by a secretary and six inspectors—three of whom are assigned to special work; one is medical inspector, another is chaplain inspector, and the third is the woman inspector. No woman inspector was appointed until 1907 to 1908. The inspectors spend part of each month at headquarters. The rule has been that each prison should be visited by an inspector every other month. The inspectors report to the commissioners. Actually there is no independent authority with power to recommend changes in the institutions under the control of the prison commission.[1]

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[1] *English Prisons To-day*, the report of the Prison System Enquiry Committee, edited by Stephen Hobhouse and A. Fenner Brockway, pp. 54–71, London, 1922.

PRISONS AND PRISONERS

In 1921 there were four convict prisons, three for men located at Dartmoor, Maidstone, and Parkhurst, and one for women at Liverpool. The local prisons numbered forty, but the commissioners had announced their intention to close eight of these institutions. The Preventive Detention prison for hardened, habitual male criminals is located at Camp Hill (Isle of Wight), and there are Borstal institutions for boys at Borstal, Feltham and Portland and for girls at Aylesbury. The Borstal institutions correspond to our state reformatories of the Elmira type. In addition there are many institutions for dealing with juvenile delinquents under sixteen years of age.

The number of the prison population is steadily decreasing. The total average daily prison population was approximately 30,000 in 1877 as compared with 17,000 in 1914, 8,200 in 1919 and 9,800 in 1921. The prison population is, therefore, less than one-third what it was forty years ago. A comparison of the number of admissions in recent years is even more striking:

1913 to 1914	151,116
1918 to 1919	28,079
1920 to 1921	49,080

The proportion of prisoners to the general population is shown in the following table based upon the ratio of prisoners per 100,000:

Five years ending 1903 to 1904	512.3
Five years ending 1908 to 1909	540.3
Five years ending 1913 to 1914	437.5
Five years ending 1918 to 1919	157.4
Year 1919 to 1920	98.4
Year 1920 to 1921	116.7

The daily average of women prisoners is as follows:

1913 to 1914	2,331
1918 to 1919	1,405
1920 to 1921	1,235

Women prisoners comprise about 14 per cent of the total, and the decrease corresponds to the general decrease.

The average length of sentences in local prisons is about five weeks; in convict prisons it is about four years. The average length of sentences in local prisons has very slightly increased since 1900; in convict prisons it has decreased by one year. Of the 48,000 persons committed to local prisons in 1921, there were nearly 12,000 sentenced to two weeks or less, and over 5,000 of these were sentenced to one week or less.

The offenses, taking records over a period of years and classifying them under three heads are: (1) serious (murder, wounding, sexual offences, burglary and fraud); (2) petty (including drunkenness); and (3) offences against regulations. Of the offenders, 17 per cent are guilty of serious crimes, 73 per cent of petty, and 10 per cent violate regulations. Classified under the three heads (1) against the person, (2) against property, and (3) other offences, the results give 8 per cent against the person, 18.5 per cent against property, and 73.5 per cent other offences. Of the last about nine-tenths are convictions for drunkenness and vagrancy. Many of the offences against the person are occasioned by drink.

"Many of those in prison have no doubt sinned against their light; a proportion have deliberately adopted a dishonest course of life as a means of livelihood; but for the most part they are victims of vicious social surroundings and poverty—a wretched collection of human beings, physically weak, undernourished, mentally undeveloped, lacking in will power, the outcasts of our civilization."[1]

LOCAL PRISONS

The local prisons correspond to our county jails and houses of correction. They are used for persons awaiting trial as well as for those who are serving sentences of less than three years—the minimum term for penal servitude. Most English counties have one such prison and London has four. As already indicated they are under the direct control of the prison commissioners. They are what their name suggests, local prisons for short-term prisoners and for the detention of persons awaiting trial, forming an integral part of a general prison system under the control of the central government. Their work is correlated with that of other parts of the prison system, and their routine is not unlike that of the convict prisons with the necessary adaptation to the short-term offender.

If the local prison has control of the prisoner for more than twenty-four hours, he is set at work in some form of productive labor. In men's prisons the offender works for a month alone, in solitary confinement, before he is assigned to labor in association with others, and if he disobeys the rules he may be sent back to solitary labor in his cell. In the prisons for women the inmates, as a rule, work in association from the beginning. Even the persons awaiting trial work, although their labor is, of course, optional, and they are paid for it. Most of them prefer work to idleness. The industries are similar to those in the convict prisons, and the general regime is not unlike that for the more serious offenders. The mark system is the foundation of the English prison system, and is used both in local and convict prisons.

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[1] *English Prisons To-day*, the report of the Prison System Enquiry Committee, edited by Stephen Hobhouse and A. Fenner Brockway, pp. 3–18, London, 1922.

CONVICT PRISONS

Penal servitude is imposed for the most serious offences or for repeated crime. It must not, however, be assumed that prisoners at convict prisons are more degraded and vicious than those in the local prisons. Probably the opposite is the case. They tend to be "artists in crime" and are a better type in many ways.

The great majority are serving sentences of not more than five years. In 1921, of the 492 sentenced, 444 were for five years or less. About two-thirds received the minimum sentence of three years. Eleven prisoners were sentenced for life, one for 20 years, two for 15, eleven for 10, six for 8, fourteen for 7, and three for 6 years.

Recidivism is the outstanding feature of the population of convict prisons. Of the total number in a single year, 44 per cent had previously been sentenced to penal servitude. If we include conviction to local prisons, only 16 per cent had never been previously convicted. No less than 33 per cent were under 30 years of age when sentenced to penal servitude. An ex-convict remarked that "the youthfulness of most murderers and assaulters was striking, but forgers and defrauders were not normally young."

A man sentenced to penal servitude is sent first to the nearest local prison to serve a preliminary period of solitary confinement. The English prison authorities still believe in the salutary effect of solitary confinement for a limited period of time. During this probationary interval he is given work in his cell. He can earn marks at the rate of 8 a day, and he must earn 720 marks before he can enter the graded service. During this time he is carefully watched by a physician, his diet is regulated, and the comforts furnished him are gradually increased. At the end of this probationary stage the prisoner is taken to one of the regular convict prisons and set to work with his fellow prisoners. He enters the lowest grade and is given 8 marks a day for perfect behavior. At the end of a year, or after he has earned 2,920 marks, he is promoted to the next grade, and after another year to the first grade. If he fails to earn his marks, his promotion is delayed. Privileges and comforts are gradually increased from grade to grade. By good conduct a prisoner can lessen his term by as much as one-fourth of his sentence. In all cases release is conditional unless he has completed the full time of his sentence.

Besides the progressive grading of offenders just described, several other classifications are used in English prisons. The most important of these is that all first offenders are placed in a class by themselves, known as the Star class (so-called because they wear red cloth stars on their caps and coats), and kept entirely separate from the rest of the prison population. This class was introduced into the convict prisons in 1879 and into local prisons in 1896. The class has special privileges and is given special instruction in trades. One entire convict prison is set aside for Star class offenders. There are, also, special divisions for long sentenced prisoners and for aged convicts. Epileptics and prisoners suffering from contagious diseases, like tuberculosis, are separated from the rest of the prison population. Every English prison has hospital wards for the sick in charge of medical officers.

Literary education in English prisons is limited to the prisoners who have not had the fundamentals of a good elementary education. These are required to attend school so many hours a week. In every prison there is a school teacher and a chaplain. Religious instruction is given by the chaplain and his assistants, or by ministers of other denominations. There is usually a good library in the prisons, but the system of allotting books is often unsatisfactory.

Discipline in English prisons is maintained almost entirely by the use of solitary confinement, lessened diet, or the restriction of privileges as punishments. The number of prisoners subjected to corporal punishment has greatly decreased during recent years. The decrease followed the Prison Act of 1898. During the four years previous, the number of cases was 301; during the four years immediately following, there were only 92. During the same years, the yearly average number of offences of all kinds against prison discipline decreased from 147 to 131 per 1,000 prisoners. Between 1900 and 1921 corporal punishment practically disappeared.

The labor in English prisons is wholly for the government. No goods made in prison are put on the open market and sold in competition with articles made by free labor. Everything made by the prisoners is used by the government. The system is a combination of the state use, public works and state farm systems. Agricultural work is still employed only to a limited extent. Road building has not been developed very much, but other kinds of public works have been engaged in by the prisoners. They build their own buildings and have also constructed breakwaters, dockyards and public buildings. The principal kind of labor, however, is the manufacture of supplies for government departments. Thus supplies are made for the post office—mail bags, baskets, rugs and uniforms; for the army and navy—everything from coalsacks to flags and uniforms; and for other institutions—shoes, clothing, bedding, chairs, screens, and cabinets. At one of the prisons there is a complete printing establishment where government printing is done.

Prison industries are unsatisfactory from almost every point of view. They are of the most elementary character and are performed in a crude manner. Only in a few instances are they of any educational value to the prisoner. The instructors are rarely trained, and efficient machinery is almost entirely absent. The shops are frequently poor and the prisoners work under conditions which give them little interest or incentive. The punitive conception is very strong, and self-support and training for trade and industrial purposes are subordinated. There is scarcely any choice of labor. The daily "task" is not adapted to the capacity of the individual. No wages are paid.

Preventive Detention

Closely connected with the convict prison is the Preventive Detention Prison for "habitual criminals," established by the Prevention of Crime Act of 1908. This act provides that

> When any person has been sentenced to penal servitude, he may be sentenced to a period of preventive detention *following that of penal servitude*, provided that a jury has found on evidence (*a*) that since attaining the age of 16 years he has at least three times previously been convicted of crime, and that he is leading persistently a dishonest or criminal life, or (*b*) that he has already been found to be a habitual criminal and has been sentenced to preventive detention.

The sentence must be for a period not exceeding 10 nor less than 5 years. The persons "undergoing preventive detention must be subjected to such disciplinary and reformative treatment and be employed on such work as may be best fitted to make them able and willing to earn an honest livelihood on discharge."

The Secretary of State is authorized at any time to discharge on license a person undergoing preventive detention, and the license may be revoked at any time if there is any violation of the conditions of the release.

A preventive detention prison was opened in March, 1912, at Camp Hill on the Isle of Wight. This institution is for men only. The number of women sentenced to this form of imprisonment has been insignificant—not more than five or six at any one time—and they have been provided for in connection with the convict prison for women at Liverpool. The greatest daily average of male prisoners in any one year was 271 in 1915 to 1916. For 1920 to 1921 the daily average was 75. There are accommodations for over 300 men.

The whole regime of such a prison is different from that of a convict prison. It is milder and designed to fit the prisoner for conditional liberation at the end of his period of detention. "The dietary is more ample, more varied and of a better quality; the cells, the beds and the general conditions are more comfortable; the life is more varied; conversation and social intercourse are more freely permitted; the clothing is less degrading in character; and there is a very considerable escape from subservient routine and a beginning of self-order and self-discipline." As a whole the treatment shows a more humane and sympathetic attitude toward the prisoner than the old penal servitude system. The results, expressed in terms of the after careers of the men involved, are described as "remarkable" by persons who are extremely critical of the prison system.

THE BORSTAL INSTITUTIONS

The Borstal system is an attempt by the government to reclaim those who, between the ages of sixteen and twenty-one, offend against the law. They differ from the industrial and reformatory schools because those institutions admit children under sixteen only, and are almost all under private management. It is designed not to deal with the youthful offender who has committed some petty delinquency, but with "the young hooligan advanced in crime, perhaps *with many previous convictions*, and who appeared to be inevitably doomed to a life of habitual crime." The aim is to check the criminal tendency by the individualization of the offender. The object is reformatory.

There are two parts to the Borstal system: (1) Borstal institutions, in which youthful offenders are given "such industrial training and other instruction," and are subject to "such disciplinary and moral influences as will conduce to their reformation and the prevention of crime"; (2) the Borstal Association, a quasi-official body, subsidized by the treasury, which receives on release and is responsible for the after care of every boy and girl who has been under Borstal treatment.

In 1908, by the enactment of the Prevention of Crime Act, the Borstal system was established as a part of the penal system, taking its name from the village of Borstal, where it superseded the convict prison. There are now three institutions for boys at Borstal, Feltham and Portland (once a convict prison) and one for girls at Aylesbury. These institutions are very much like our reformatories of the Elmira type, but they do not have the indeterminate sentence, and do not receive offenders between the ages of twenty-one and thirty.

The age category, sixteen to twenty-one years, is open to serious criticism. The problem of the juvenile-adult offender cannot be separated from the general problem of juvenile delinquency because the dominant feature of both is the industrial training factor. The "youthful offender" of fourteen to sixteen and the "juvenile-adult offender" of sixteen to twenty-one are treated too much as though no connection existed between them. As a matter of fact they are two parts of one problem and often one individual figures in turn under both classifications. Vocational training is rendered ineffective because of the arbitrary age limits prescribed for the Borstal institutions and the reformatories for children under sixteen.

During recent years annual commitments to Borstal institutions have averaged nearly 600 for boys and 180 for girls. The average age of the boys received was seventeen years eleven months and of the girls, eighteen years five months. The minimum period of detention is two years the maximum three years. But male offenders may be released on license after six months, females after three months, and licensing is freely used.

When a juvenile adult is released, work is found for him, and he is put under the care of the Borstal Association, an integral part of the Borstal system. The association is a voluntary organization formed especially to provide supervision of those paroled from the institutions. The expenses are met by treasury grants and voluntary subscriptions in the proportion of a two-pound grant for every pound voluntarily subscribed. The association is the outgrowth of a small society formed to visit boys in the London prisons and later in the prison at Borstal. It was founded by Sir Evelyn Ruggles-Brise and was provided for in the Prevention of Crime Act of 1908.

The results of Borstal treatment are shown in the following table:

a. 1,454 boys discharged August, 1909 to March, 1914.
940, 64 per cent not reconvicted and satisfactory.
b. 122, 8.4 per cent unsatisfactory, but not reconvicted.
c. 392, 27 per cent reported as reconvicted.

When these figures were compiled all of these boys had been at liberty at least twelve months.

Of discharges for two years ending March, 1915, the percentages of those doing well vary according to age at commitment as follows:

Under 17	82.72
17 to 18	83.97
18 to 19	80.18
19 to 20	75.74
20 to 21	68.23

Success with boys of over twenty when committed has dropped from 68 per cent in 1915 to 45 per cent in 1919. A comparison of this result with the result of the Preventive Detention system, where success is claimed for 61 per cent of habitual offenders, leads to the conclusion that the Borstal system is far from satisfactory. The successes with girls have been fewer than with boys.

DISCHARGED PRISONERS

There are four official systems of aid to discharged prisoners in England and Wales:

1. A network of prisoners' aid societies attached to the local prisons, approved by the prison commissioners, subsidized by the treasury, and affiliated to a central association with office in London. These societies are supplemented by local Borstal committees for prisoners under twenty-one, and, in some cases, for women under twenty-five.

2. The supervision and aid by the central association of convicts discharged on license, usually under police supervision, for the rest of their sentence of penal servitude.
3. The supervision and aid of convicts released on license from preventive detention.
4. The supervision and aid by the Borstal Association of inmates released on license from Borstal institutions.

Every local prison has its prisoners' aid society and some prisons are served by more than one society. All the societies are affiliated with the central association, and, in some cases, receive financial aid from it. The societies receive a capitation grant of one shilling per head of prisoners discharged during the year, provided that they raise at least half as much by local subscriptions. The sum expended upon any one prisoner must not exceed two pounds. The societies have for some time been asking for the doubling of the capitation grant.

The best of these societies not only find employment for discharged prisoners, and assist them by grants of money and clothing, but also maintain industrial homes where ex-prisoners can receive training to fit them to reenter free social life. In 1911 these societies aided over 40,000 discharged prisoners. In 1913 the total income of the societies amounted to over $120,000,000, of which nearly $50,000,000 came from the government.

Civil Service

Subordinate officers are appointed from a list of persons who have passed educational and medical tests. There is a very searching examination into their antecedents. Before being placed on the permanent staff they usually attend a training school for four months, after which they serve a further term of probation for eight months. Formerly advertisements of vacancies were published, but now more applications are received than vacancies occur. Promotions are according to merit and pensions are given upon retirement at a certain age.

The governors, or superintendents, are appointed by the Home Secretary. They are usually ex-army or ex-navy officers. Their tenure is for life or during competence, and politics does not play any part in the prison administration. In 1921 of the fifty-four governors twenty-six had served with the army or navy. Half of the governors had been promoted from the subordinate prison staff. Since the same predilection for ex-army or ex-navy men is apparent in the appointment of subordinate officers, the military features of the prison system are naturally very pronounced.

The English prison system has had a period of seventy-five years for its development. It, consequently, represents the results to be obtained from the use of imprisonment as the principal method of punishment.

The system as it exists to-day has three definite lessons to offer administrators in other countries: (1) that the jails or local prisons of a state should be under state, and not under local control, and that they should be coordinated with the other penal institutions under a common central board or commission; (2) that partisan politics must be excluded from penal administration by civil service laws which put both the appointment and promotion of officers and subordinate employees strictly upon a merit basis; and (3) that the prison labor problem can be solved by a combination of state use, public works and state farm systems without appreciable competition with free labor outside the prison grounds.

There are certain evident disadvantages that have appeared in the course of the development of the system. The very general use of military and naval officers as administrators and the selection of many of the subordinate employees from the same forces has introduced much of the rigidity of military discipline into the rules and regulations. This result has given a basis of fact to the criticism that the system is founded on "silence, separation, slave labor and slave morality" (*English Prisons To-day*, p. 319). In addition, the long tenure of the two chairmen of the prison commissioners from 1878 to 1921 has tended to accentuate these characteristics and has added to the difficulty of change or reform. The new chairman is said to be "entering upon his duties with some reforming zeal and with a mind receptive to new ideas." Severity may be the way to *govern*, but it is not the way to *mend*. This severity or rigidity of the English prison system seems to the student of penology its weakest point. It is a survival from the earlier period of experimentation with imprisonment when silence and separation were regarded as the instruments of penitence or reform. The older psychology was mechanistic rather than scientific in a more modern sense.

Another criticism of the English prison system is to be found in the absence of any independent authority for the inspection of its workings. The only authority superior to the prison commissioners is the Home Secretary, and he is too heavily burdened with other duties to allow him time to interfere effectively. Parliament and public opinion are only occasionally interested. The result has been a failure to modify discipline and adjust it to modern ideas and knowledge. No human being can be trusted to govern other men without some supervising authority to check and control. The same criticism may be applied to some of our administrative boards of control in the United States.

Too rigid discipline of a rather arbitrary sort and a lack of any independent and constructive inspection are the most important weaknesses of the English prison system.[1]

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[1] Hobhouse and Brockway, *English Prisons To-day*, pp. 73–85, 93–108, 109–125, 231–245, 316–336, 362–388, 410–440, 441–466, 467–474. This study is extremely critical in its attitude. Webb, "English Prisons under Local Government," pp. 180–

Watson, the behaviorist psychologist, has declared that "the idea that a child's future bad behavior will be prevented by giving him a licking in the evening for something he did in the morning is ridiculous.

"Equally ridiculous, from the standpoint of preventing crime, is our legal and judicial method of punishment which allows a crime to be committed in one year and punishment administered a year or two later—if at all." This statement, of course, applies to imprisonment as the principal method of punishment now in use in Europe and in the United States.

In another place, Watson refers to present methods of punishment as "relics of the Dark Ages." In his opinion only the sick or psychopaths (insane) and the socially untrained commit crimes. Society must cure or segregate the former, and train the latter. Education and training may take ten to fifteen years or even longer. No human being should be deprived of air, sunshine, food, exercise and other physiological factors necessary to the best living conditions. Such training should, in his opinion, replace the present retaliation or punishment theory of handling the untrained or antisocial individuals. The religious theory of penitence which formed the foundation for cellular imprisonment has no place in behaviorism as presented by Watson.

Bernard Shaw pays his respects to imprisonment in a thoroughly Shavian essay of seventy pages prefaced to "English Prisons under Local Government" by Sidney and Beatrice Webb. Penal servitude he regards as "a merely sentimental evasion" of the death penalty, and as "a weak and cruel method of taking a criminal's life."

> At present you torture them for a fixed period, at the end of which they are set free to resume their operations with a savage grudge against the community which has tormented them. That is stupid. Releasing them is like releasing the tigers from the zoo to find their next meal in the children's playing ground.[1]

Review Questions

1. Do primitive people punish their children?
2. State Faris' theory as to the origin of punishment.
3. How many groups are necessary for the development of punishment? What are these groups?
4. What is the function of the "buffer group"?

251, London, 1922. Ruggles-Brise, "The English Prison System," London, 1921. This study is the official version by the chairman of the Prison Commissioners from 1895 to 1921. Ellwood, The English Prison System in the *Journal of Criminal Law and Criminology*, vol. VII, pp. 22–31, May, 1916. A very favorable and optimistic view by a distinguished American professor of sociology.

[1] WATSON, "Behaviorism," pp. 146, 147, W. W. Norton Co., 1925. Bernard Shaw's essay may be found in Webb, "English Prisons under Local Government," Longmans, Green and Co., 1922, and as a separate reprint issued by the Department of Christian Social Service of the National Council of the Protestant Episcopal Church, Brentano's, Inc., 1924.

5. Explain how this theory is illustrated by our institutions of justice.
6. How was crime dealt with among the Teutonic nations?
7. How did the king's power develop?
8. What were the early prisons used for?
9. Describe conditions in the early prisons.
10. What were the ordeals and what was one of the best-known ordeals?
11. What were "poetic" punishments? Give examples.
12. What changes have taken place in the character of punishments during the last century?
13. What were the results of the severity of punishment in England?
14. Compare the views of Samuel Johnson and of Warden Lawes as to the death penalty.
15. What is the importance of the death penalty?
16. Explain the relation of the outlaws to modern convicts.
17. When did transportation come into use and to what parts of the world were convicts sent?
18. What were the "hulks" and when were they used?
19. Why was transportation to Australia given up?
20. Describe the three great penal settlements there.
21. How did cell prisons originate?
22. What was the reformation by solitude theory?
23. What was the "model" system?
24. What was "model" labor?
25. Explain how penal servitude replaced transportation.
26. Describe the changes in the penal system in England during the eighteenth and the first half of the nineteenth centuries.
27. When and why did the central government assume the administration of the local prisons?
28. Describe the administrative machinery of the English prison system.
29. Describe the different kinds of penal institutions in England.
30. What punishments are used?
31. What kinds of prison industries have been developed?
32. What provision is made for "habitual criminals"?
33. How did the Borstal system acquire its name and to what American penal institutions does it correspond?
34. What provisions are made for discharged prisoners?
35. Describe the civil service in English prisons.
36. What are the defects of the English prison system?

Topics for Investigation

1. Study carefully Faris' theory of the origin of punishment. See the *International Journal of Ethics*, pp. 54–67, October, 1914.

2. Discuss the psychology of primitive justice. See Mead in *The American Journal of Sociology*, pp. 577–602, March, 1918.

3. Discuss the theory of punishment presented by Oppenheimer in "The Rationale of Punishment" published in London in 1913.

4. Study the evolution of law and justice in Hobhouse, "Morals in Evolution," Chap. III.

5. Discuss the preface by Shaw written for Webb, "English Prisons under Local Government"; also published in pamphlet form under the title of *Imprisonment.*

6. Discuss the use of the death penalty. See Lawes, "Man's Judgment of Death" and "Life and Death in Sing Sing," Chaps. VII, VIII.

7. What is the status of capital punishment in the United States? See Bye in the *Journal of Criminal Law and Criminology*, pp. 234–245, August, 1926.

8. Study the transportation of English convicts to the American colonies. See Butler in the "American Historical Review," vol. II, pp. 12–33.

9. State the basis for punishment as described by Sir E. F. Du Cane in "The Punishment and Prevention of Crime" published in 1885.

10. Describe the treatment of women prisoners in England. See Gordon, "Penal Discipline."

11. Discuss the criticism of the English prison system by Hobhouse and Brockway, *English Prisons To-day.*

12. Describe the transportatin of English convicts after 1783. See the *Journal of Criminal Law and Criminology*, pp. 359–381, November, 1922.

13. Describe European methods and ideas of penal treatment at the present time. See report submitted to the National Crime Commission by Louis N. Robinson.

14. Discuss the curious punishments of earlier times. See Earle, "Curious Punishments of By-gone Days."

15. Describe the prison system of Japan. See Gillin in *Social Forces*, pp. 177—189, December, 1928.

Selected References

1. Sutherland: "Criminology," Chaps. XIV, XV, XVI.
2. Gillin: "Criminology and Penology," Chaps. XIV–XVIII, pp. 385–387; Chap. XIX, pp. 408–413.
3. Wines: "Punishment and Reformation," Chaps. III–VII, IX.
4. Parmelee: "Criminology," Chaps. XXII–XXIII, XXV.
5. Hobhouse: "Morals in Evolution," Chap. III.
6. Lawes: "Man's Judgment of Death."
7. Lawes: "Life and Death in Sing Sing," Chaps. VII–VIII.
8. Oppenheimer: "The Rationale of Punishment."
9. Ruggles-Brise: "The English Prison System."
10. Gordon: "Penal Discipline," Chaps. I–V.
11. Webb: "English Prisons under Local Government," preface by Shaw.
12. Du Cane: "The Punishment and Prevention of Crime," Chaps. I–III, V.
13. Hobhouse and Brockway: *English Prisons To-day.*
14. Ruggles-Brise: "Prison Reform at Home and Abroad."
15. Earle: "Curious Punishments of By-gone Days."
16. Griffiths: "The Chronicles of Newgate."
17. Knapp and Baldwin: "The Newgate Calendar."
18. Ives: "A History of Penal Methods."

CHAPTER IX

THE JAIL SYSTEM

The jail is the most important of all our penal institutions. There are one hundred jails to each penitentiary and twenty arrests for misdemeanors to each arrest for felony. From two-thirds to three-fourths of all convicted criminals serve their sentences in jails. The jail is the almost universal detention house for untried prisoners. Important witnesses are also detained in jail, and it is sometimes used as a temporary asylum for the insane. Nearly every criminal apprehended is subjected to its influence. In a state like Iowa probably two thousand persons find themselves in jail each year for the first time.

The jail is the oldest prison. It was used first as a place for the detention of untried persons, of those who had not paid their fines, and of those who were awaiting punishment. Later, when imprisonment became a form of punishment, it was the place in which sentences were served. The double use as a place of detention and of punishment still persists in the United States. The English jail of the seventeenth century was brought over to America by the colonists. In England the jail has changed, but in the United States it continues with very little, if any, improvement.

Besides the county jails there are other local county and municipal institutions for short-term prisoners, such as workhouses, houses of correction, farms, road camps and stockades. Of these institutions the jails are by far the most numerous and receive as many prisoners as all the other local institutions put together. There are nearly 2,000 county jails out of a total of local institutions of less than 3,500. Almost the only difference between the other local institutions and the jails is that they are not used as places of detention for persons awaiting trial, and they have some arrangements for giving employment to the prisoners. In other respects they form a part of the problem which the jail presents.[1]

The best characterization of a jail is that of Joseph F. Fishman, who was for many years the sole inspector of prisons for the federal government. He defines the jail as follows:

> An unbelievably filthy institution in which are confined men and women serving sentence for misdemeanors and crimes, and *men and women not under sentence who are simply awaiting trial.* With few exceptions, having no segregation of the convicted from the unconvicted, the well from the diseased, the

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[1] *Prisoners*, 1923, p. 3, Bureau of the Census, Washington, D. C., 1926.

> youngest and most impressionable from the most degraded and hardened. Usually swarming with bedbugs, roaches, lice, and other vermin; has an odor of disinfectant and filth which is appalling; supports in complete idleness thousands of able-bodied men and women, and generally affords ample time and opportunity to assure inmates a complete course in every kind of viciousness and crime. A melting pot in which the worst elements of the raw material in the criminal world are brought forth, blended, and turned out in absolute perfection.

As a result of his wide experience gained in the performance of his official duties, Mr. Fishman believes that this description will apply to fully eighty-five per cent of the jails of the country.

To this indictment should be added the practice of subjecting women prisoners to the supervision of male attendants, and the plan existing in many states of paying the jailer a per diem amount for boarding each prisoner without specifying how much or how little food is to be provided. This fee plan has made the sheriff's office the center of county politics and an exceedingly lucrative post. Not infrequently the sheriff of an urban county is able to retire after several terms in office with ample means to live in California or Florida.

In one county a reliable investigation brought out the fact that the cost of feeding prisoners was eight cents a day while the sheriff received forty-five. In many counties the sheriff is permitted to sell special articles of food, tobacco or other "luxuries" to the prisoners. A judge, who was a member of a committee of judges investigating the feeding of jail prisoners in one of the largest cities in the country, declared that in his opinion the sheriff of that county was making ninety thousand dollars a year.[1]

Another observer of jail conditions has this to say of the effect of the jail on the young man:

> We take a boy just past 16 and sentence him to 30 days or 60 days in the county jail for stealing a bicycle. The purpose of the sentence is to impress upon his mind that he must be virtuous, that he must have respect for the government under which he exists. So for 60 days he gets no exercise, no pure air, no mental exercise, no good reading matter, no valuable sermon or lectures; he sees no worthy deeds or acts of charity or kindness performed. The only thing he hears is the vilest of stories; he is taught how to engage in the drug traffic, how to avoid officers in the transportation, sale and manufacture of liquor, how to commit burglary; he is introduced into a ring of automobile thieves. After he has been attending a school of crime with past masters as teachers we release him with a firm admonition to "be good." If he is better, he has violated every known rule of experience. Almost any one who has looked at a typical jail

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[1] Moley, "Politics and Criminal Prosecution," pp. 101–104, Minton, Balch & Company, New York, 1929. Note Moley's opinion of Fishman and his description of the Cleveland jail. Moley has been associated with a number of first-hand studies of the administration of criminal justice from 1921 to 1927. See foreword, p. ix.

with an open and intelligent mind comes to about the same conclusion as to its failure in the corrective and reformative purpose for which it is supposedly intended.[1]

Mr. Amos W. Butler for many years secretary of the Board of State Charities of Indiana describes the county jail as a school of crime:

> This is a land of free schools. We do not commonly know all the schools supported by the taxpayer.
>
> The county jail is a school. It is supported by the public. It is a school of crime. There the teachers, the older offenders, teach the pupils, the less experienced, all they know of criminal ways.
>
> It is a school that should be abolished. We have clung to it for a century without much improvement. Why? Because we have not applied our minds to it. We have not been willing to adopt a better way of dealing with petty offenders. The jail system of this country is condemned by its fruits. It is bad in Indiana. It is just as bad according to my information in other states. The Indiana Board of State Charities for near a third of a century called attention strongly to jail conditions and favored district workhouses operated by the state for convicted misdemeanants.
>
> In the halls of the State House at Indianapolis while the bill for the establishment of the State Farm was being considered, there hung a placard which read:
>
> HOW PRISONERS LIVE AND LEARN IN INDIANA COUNTY JAILS
>
> They live in idleness at the expense of the taxpayer.
> They learn vice, immorality and crime.
> They become educated in criminal ways.
> They degenerate both physically and morally.[2]

And yet believers in the old-fashioned way of administering justice, who think the present tendency to give courts and penal institutions power to adjust penalties to the individual delinquent and differentiate as to treatment is wrong, would have us regard the way of the jail as the sure means to reduce crime. The jail represents in the present century a survival of old methods of deterrence and punishment found to be useless and abandoned to a considerable extent in prisons and reformatories. They persist in our jails and local penal institutions because public opinion is uninformed and inert. I once heard a district judge in Iowa say that a certain county jail, located in the damp, dark basement of an old county court house, was good enough for the type of inmates usually committed to such an institution. This judge was a fine, Christian gentleman in his personal life, one of the pillars of the local Congregational church. We need the moral indignation of another John Howard to arouse public opinion to the appalling conditions in county and municipal jails. There is no way out until public opinion compels the community to give to the jail the attention it needs. Up to the present time every effort has failed. The improvement during the last fifty years is hardly perceptible. Only here and there has there been improvement. Frequently, better quarters are merely incidental to the building of a new court house and do not result from any clear understanding of the situation.[1]

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[1] FISHMAN, "Crucibles of Crime," pp. 13–14, Cosmopolis Press, New York, 1923; *Propagating Crime through the Jail and Other Institutions for Short-term Offenders*, report to the National Crime Commission, pp. 3–8, 1929.

[2] BUTLER, The County Jail and the Misdemeanant Prisoner in *The Journal of Social Forces*, vol. II, p. 220, January, 1924.

THE IMPORTANCE OF THE JAIL

What is the problem of the misdemeanant in terms of types of criminals and of expenditure for their treatment? Here are the facts in Massachusetts: There are five state institutions and seventeen houses of correction and jails operated by the counties under state supervision. Twenty-one are concerned with minor offenders; one only deals with serious offenders. The state prison had an average population of 852 in 1926, while in the jails, reformatories, state farm, prison camp and hospital, and houses of correction, there were an average of 5,805 prisoners during the same year. In addition, there were 1,253 persons on parole—a total of 7,910 adult offenders. By percentages, 10.8 were serious offenders, 73.4 were minor or casual offenders, and 15.8 were on parole.

The net cost of the handling of this population was $2,319,566.91. The serious offenders cost $200.01 per capita, the minor offenders $326.84 each, and the paroled $34.22 for each individual. The percentages were 7.3 to the state prison, 90.9 to care for the minor offenders, and 1.8 for the parole system.

Our crime problem is by cost a little over seven per cent a state prison problem. Yet most of our crime news is about this group of serious offenders. Public opinion is formed for this type of offender. More than ninety per cent of crime expense is for a most mediocre and colorless lot of individuals who never are referred to in the newspapers. Remember that from the ninety per cent of the beginners are to be recruited the felons of the future. Many of these minor offences might be prevented, if we knew how and had the will to do it.[2]

For the country as a whole the importance of the jails and other local penal institutions is shown in the following table:[3]

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[1] LATHROP, The Local Jail in "Christianity and Social Adventuring," edited by Jerome Davis, pp. 335–345, The Century Company, 1927.

[2] GATES, Crime in Massachusetts in *The Survey*, vol. LX, pp. 103-104, Apr. 15, 1928.

[3] *Prisoners*, 1923, pp. 22–24, Bureau of the Census, Washington, D. C., 1926.

COMMITMENTS JANUARY 1 TO JUNE 30, 1923

Class of institution	Number	Per cent
Federal prisons	2,003	1.2
State prisons	12,290	7.4
Reformatories	4,787	2.9
State farms	2,854	1.7
County jails	57,761	34.7
Municipal jails	38,971	23.4
County workhouses	13,524	8.1
Municipal workhouses	21,315	12.8
County farms and chain gangs	6,582	4.0
Municipal farms and stockades	6,269	3.8
Total	166,356	100.0

The distribution by percentages gives to county and municipal jails 58.1 of the total. Other local penal institutions received 28.7 per cent additional commitments. There were, consequently, 86.8 per cent of the commitments during the first six months of 1923 made to jails or similar institutions. There were only 102 federal or state prisons and reformatories compared with 3,500 local institutions. *Somewhat less than one-eighth of the number of commitments* to the jails and other local penal institutions *were made to the federal or state institutions*. Actually, our typical penal institution in the United States is not the reformatory or state prison but the jail. We can not "point with pride" to it, and it is really much more important and influential than are the institutions to which we have given our attention.[1]

COMPOSITION OF THE POPULATION OF COUNTY PENAL INSTITUTIONS

For several years Massachusetts has been making a psychiatric study of the men and women who make up the population of the county penal institutions. The study is conducted by the Division for Examination of Prisoners of the Department of Mental Diseases and the state is divided into five districts, in each of which is stationed a unit made up of social workers and a psychiatrist. The results of the study are sent to the Department of Correction where the advised treatment is tried.

A recent classification showed the greatest proportion to be *problems of alcoholism:* 31 per cent would probably benefit "by a long period of treatment in an institution that will prevent the use of alcohol and provide training and occupation." About one-third, or 11 per cent, could be paroled after treatment under well-organized supervision. There is no provision for this large group of men and women.

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[1] *Propagating Crime through the Jail and Other Institutions for Short-term Offenders* report to the National Crime Commission, pp. 16–18, 1929.

Another class, nearly 9 per cent, also has as yet no provision for its care. These are the *psychopathic delinquents*, "whose intelligence is good, but whose emotions are undisciplined or destructive." Such persons require long treatment in an institution to protect society, and to give them training until it seems safe to allow them to return to normal society.

The *mentally diseased* or *epileptic* have been found to comprise nearly 4 per cent; *defective delinquents* nearly 5 per cent; the *feeble minded*, not essentially delinquent, 3 per cent. Those classed "as probably self-correcting after sentence," comprise 14 per cent; 4 per cent are called "hopeless," and 28 per cent to be helped in the community by guidance and help from some social agency. The last group is the most promising. After two years' trial it was found that only 5 per cent of this type had been again committed as compared to the usual proportion of recidivism, about 50 per cent.

Arranged in tabular form we have the following groups:

	Per cent
Alcoholism	31
Psychopathic delinquents	9
Mentally diseased or epileptic	4
Defective delinquents	5
Feeble minded	3
Self-correcting	14
Hopeless	4
Helped in community	28
Miscellaneous	2
Total	100

State and federal departments show increasing appreciation and readiness to cooperate. The same is true in regard to private agencies. Success in this new experiment does not depend upon public authority and resources.[1]

This Massachusetts study makes clear what a composite mass of human beings compose the population of our jails and other local penal institutions. They are the catchalls for the misfits, weaklings and ne'er-do-wells of society. The inmates must be studied, classified and treated according to their needs. They can not all be handled in the same way any more than all the patients in one of our hospitals can be treated alike regardless of whether they are suffering from broken legs, typhoid fever or paralysis. Here is the real source of our crime problem, and here only can fundamentally preventive work be done. The reformatory and prison come too late, and some of the inmates of our jails belong in other kinds of institutions than penal. The elimination of the jails and the distribution of their inmates among institutions and agencies fitted to deal with their particular individual characteristics would be a long step in the direction of a constructive attack upon our crime problem.

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[1] Simmons, Psychiatric Signposts in *The Survey*, vol. LX, pp. 104–105, Apr. 15 1928; see also *Report to National Crime Commission*, pp. 20–22, 1929.

The Elimination of the Jail

There is no reason for two distinct sets of penal institutions in a state. There is no important difference between misdemeanants and felons. In one state the same offence may be regarded as a misdemeanor and in another state as a felony. All criminals are guilty of offences against the laws of the state and are tried in the courts constituted by the state.

Again the county is too small a unit to provide efficient management. Only the larger urban counties have a sufficient number of inmates to make it feasible to provide productive labor and to employ a competent superintendent. The vast majority of counties cannot be expected to maintain a well-equipped house of correction or penal farm. The obvious course to be followed is to turn over all criminals to the control of the state authorities, or to group adjoining counties together and provide some sort of a group or district institution.

The fundamental cause of the evils in jails and similar institutions is the fact that they are so completely under local governmental control. The distribution of functions that has placed these institutions under local control is a part of our English inheritance. It results from our acceptance of the almost universal value of local home rule. England, in 1877, after wrestling for years with the same conditions that confront us, placed her local prisons under state control. There are no peculiar circumstances in this country that warrant us in believing that these institutions must remain under local and municipal management. Almost complete failure under such direction suggests the wisdom of the English decision. From two to six local prisons would probably be sufficient for any single state. Iowa with ninety-nine counties has fifteen times as many as are either necessary or desirable. The average population of local penal institutions in the United States is less than eleven. Obviously that number is too small to justify the employment of a first-class superintendent at a good salary and the expenditure for tools, machines, workshops and personnel. In Europe an institution of about 500 inmates is the accepted standard for size. Only in our larger cities would penal institutions of that size be needed.

Another reason for doing away with local control is the need of the utilization of different types of institutions for the care and treatment of the heterogeneous group of offenders now confined in the local institutions. Centralized state administration is essential to obtain the best results.[1]

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[1] *Propagating Crime through the Jail and Other Institutions for Short-term Offenders*, report to the National Crime Commission, pp. 18–20, 1929.

Miss Edith Abbott, chairman of the Committee on Crime of the Illinois State Conference of Charities in 1916, declared that "the only way to solve the county jail problem is to abolish the county jails. It is folly to hope that any attempt to reform the county jails of Illinois or of any other state can be even measureably successful. One attempt after another has failed in the past, and similar efforts will fail in the future."

In 1870, in Illinois, a survey of county jails was made and a new jail law was passed in 1874. This law has never been amended and it has never been enforced. A very thorough survey made in 1915 brought to light abuses as serious as those that were found in 1870. The provisions of the law of 1874, which required that the jails be sanitary and clean and that different classes of prisoners should be separated, were not enforced in 1916, they never have been enforced, and it is a safe prediction that they never will be enforced. Any legislation that is left to a hundred and one different local authorities to enforce simply will not be enforced.

There are in Illinois one hundred and one counties outside of Cook County in which Chicago is located. Consequently, one hundred and one different local authorities must be made to understand the county jail problem before any reforms can be expected. Furthermore, one hundred and one different local authorities must be educated at one time, and two years later a new set of officials may be elected and the work must be done over again.[1]

During 1919 the secretary of the Pennsylvania Prison Society visited the sixty-seven county jails of the state. This survey confirmed him in his conviction that some radical change in the administration of these institutions is needed in order to keep pace with modern principles of penology. Confinement he found to be the main purpose of the majority of the county prisons. Most of the officials deplored the lack of useful employment for the majority of the inmates. They regarded employment as essential in order to maintain the health and morale of the prisoners. In most of the county institutions no provision is made for employment and there are serious difficulties in securing it because the population is small and constantly changing in most of them.

The secretary recommended as a result of this survey that the state should assume the care of all convicted prisoners. The county prisons would then be used only for the detention of the untried and of those sentenced to a few days for minor infraction of local regulations. The establishment of a few state industrial farms, on which agriculture, horticulture, quarrying, stonecrushing, concrete work, brickmaking and two or three other special industries would furnish employment, he regarded as "the best solution of the most vexatious of our prison problems." He added that his conclusion was "not based on mere theories, but on successful experiments in other states."

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[1] Abbott, *The One Hundred and One County Jails of Illinois and Why They Ought to Be Abolished*, issued by The Juvenile Protective Association of Chicago, 1916.

In 1929 the secretary expressed the hope that the legislature would give consideration to the bill providing that ten regional penal farms be purchased and equipped for the reception of prisoners from the county jails. Such a measure has been urged by the Prison Society since 1909. In 1917 it secured the passage of a law for the establishment of nine penal farms, but this measure proved ineffective since it was amended so that each of the institutions was to be authorized and managed by the county commissioners of the counties constituting the district. It proved impossible to agree upon a site, provide funds for building or undertake the management. Not one of the institutions was ever erected. The latest bill makes the building mandatory upon the county officials instead of optional.[1]

THE INDIANA STATE FARM FOR MISDEMEANANTS

One of the best examples of what can be done for the elimination of county jails is the Indiana State Farm for Misdemeanants established in 1913. The movement for a penal farm colony grew from a knowledge of county jail conditions, and after a number of laws had been passed with the object of improving the situation by regulation and supervision.

One thousand six hundred and five acres of land, forty-five miles from Indianapolis, were purchased as a site for a "correctional institution for male violators of the law." Persons over sixteen years of age, sentenced for more than thirty days must be sent to the farm, while those sentenced for shorter terms may be sent there. Near-by counties could make use of the farm for prisoners serving less than thirty days. In such counties the jails would be occupied only by persons awaiting trial.

The site of the farm was clay land which had not been carefully cultivated but was capable of being brought up to a good state of tillage. It was underlaid by Mitchell limestone considered to be the best road material in the state. It contained an old stone quarry and there were the remains of lime kilns and potteries. Altogether, the place was a fine piece of property in the rough, and the labor that had been going to waste in the county jails is making out of it a beautiful and productive estate.

Prisoners were transferred to the farm from the state prison in November, 1914. They lived in tents until they had erected buildings. The governor by proclamation declared the institution open on April 12, 1915. Prisoners were received rapidly—1,174 were committed during the first six months, 2,322 in 1916 and 2,536 in 1917. After the United States entered the World War, and, later, when prohibition went into effect, the population declined until, in 1920, there were only 992 commitments, and the daily average attendance dropped from 730 in 1917 to 293. For the fiscal year 1922 the statistics show an increase. There were 1,841 commitments and the daily average attendance was 555.

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[1] VOTAW, "Review of the County Jails in Pennsylvania," published by the Pennsylvania Prison Society, May, 1920; *The Prison Journal*, published quarterly by The Pennsylvania Prison Society, vol. IX, No. 1, p. 25, January, 1929.

When the establishment of the institution was proposed, it was predicted that there would be a material reduction in the population of the county jails. The reduction occurred sooner than was expected. The number of commitments to the jails to serve sentence or for fines was 18,130 in 1914, the last year before the farm was opened. In 1916 there were 9,896 commitments—a reduction of nearly 50 per cent during the first complete year of the new institution. There were several causes, of which undoubtedly the prohibition law was the most important. In 1922 there were but 3,663 commitments to the jails to serve sentence or pay out fines. Total admissions to county jails declined from 45,750 in 1915 to 29,203 in 1922.

It is still possible under the Indiana law for convicted persons to serve their sentences in county jails. If the sentence is for less than thirty days, it is left to the discretion of the judge to decide whether it shall be served in a county jail or at the state farm. The shorter sentences —five-, ten- and fifteen-day sentences—are of very doubtful value either to the offender or to the state. There should be a system of conditional release for misdemeanants the same as for persons guilty of felonies.

The state furnished a comparatively small sum of money to equip the state farm. An old sawmill was bought and connected with a spring for water supply. It was set up by prisoners and they began cutting timber and sawing it. From this lumber the first building was erected. Out of the quarries they obtained stone for the foundations and from crushed stone and cement the material for fence posts. The old buildings have been remodeled and new ones built. Vegetables and other farm products have been grown for the use of the prisoners and to feed the stock. A fine herd of dairy cattle has been developed. Thousands of fruit trees have been set out. They have grown willows and made willow ware. They have put down wells, opened quarries, made brick, cement blocks, building and drain tile, crushed stone for road use and for railroad ballast, burnt lime, ground limestone for agricultural use, dug coal, built many miles of fencing, a railroad switch with stone culverts and bridges, and made roads and drives. All this work has been done, and, in addition, the usual routine of an institution of this kind has been kept up.

Evidently, a great amount of work has been done to the advantage of the state. The men have also profited. They have gone out in better health, many of them weighing more, as a result of their work for the state. It cannot too strongly be emphasized that all these accomplishments have been carried out by the organization and use of labor that ordinarily goes to waste in our county jails. Furthermore, the cost of maintenance of these offenders is saved by their useful and productive employment. It is impossible to estimate the amount of productive labor that goes to waste each year in the jails throughout the country. Butler states that 450,000 persons are committed to county and municipal prisons each year.[1]

Other Prison Farms

The state farm for misdemeanants is not original with Indiana. In 1870 Belgium established at Merxplas a colony for vagrants and misdemeanants, which is one of the largest in the world, accommodating from five to six thousand inmates. In Switzerland, at Witzwil, is the best known penal agricultural colony, established in 1895.

In the United States the southern states have led the way and have demonstrated the good and the bad features of large prison farms. The farm of 9,000 acres at Angola, Louisiana, and the 14,000 acres farmed by Mississippi prisoners are among the early examples. One of the best known is the State Prison Farm at Raiford, forty miles from Jacksonville, Florida, where the state has bought 15,000 acres of land. There are about 500 convicts engaged in the varied and useful industries of the farm: chicken colonies, cattle and dairy, corn, rice and grain.

Another form of open air employment of prisoners in the South is road building. Such occupation has not been so successful in the North because of the longer winters, expense of housing and guarding prisoners, and the sentiment against the public punishment of offenders. Northern prisoners can be more successfully employed in farming and gardening and in the preparation of road material. Farms in connection with prisons, reformatories and jails and separate prison camps, colonies and farms have had a considerable development in the northern states and in Canada during the last few decades.

In 1905, Cleveland, Ohio, began to take prisoners from the city workhouse to the city farms on a 2,000-acre tract of land on which were being developed a municipal cemetery, the almshouse and the tuberculosis sanitarium. Kansas City, Missouri, established a similar institution in 1909, and Congress, in 1910, provided for a penal farm for the misdemeanants of the District of Columbia on a tract of 1,000 acres at Lorton, Virginia.

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[1] Talkington, "The Indiana State Farm" in American Prison Association, pp. 115–121, 1917; Howard, The Advantages of a State Farm for Certain Types of Prisoners, "American Prison Association, 1927," pp. 255–257; Butler, The County Jail and the Misdemeanant Prisoner in *The Journal of Social Forces*, vol. II, pp. 220–225, January, 1924.

Massachusetts established a prison camp in 1904 on 1,000 acres of stony land at West Rutland. The original intention had been to clear the land, improve it and sell it, and then move to another location and repeat the process. A hospital for tubercular prisoners was located there and the prison camp became permanent for the purpose of producing food for the hospital. Massachusetts' largest penal institution is the State Farm at Bridgewater with 1,100 acres. The maintenance of the farm is the chief industry for the inmates, many of whom are misdemeanants.

About the same time that the prison camp in Massachusetts was planned, a similar farm was developing at Guelph, Ontario, on a tract of 850 acres. The first farm proved so successful that three others have since been established. The Massachusetts and Canadian experiments were independent enterprises. Neither was known to the other.

The prison farm method of dealing with misdemeanants has been tested both in Europe and the United States, but as yet it has failed to be adopted widely enough to be regarded as an alternative plan of dealing with minor offenders.[1]

A Constructive Plan

A constructive plan for dealing with misdemeanants would involve a reduction in the number of commitments to the local penal institutions. Of the 319,908 persons committed in 1923, over half, 169,231, were committed for non-payment of fine. Such treatment represents a penalty imposed for poverty. There should be created in every local jurisdiction machinery for the collection of fines by installments. If this task is not intrusted to probation officers, there should be close cooperation between the collectors and probation officers. If one-half of those committed for non-payment of fines could be handled by collection agencies, there would be a reduction in jail commitments of 86,415 annually.

Furthermore, 10.6 per cent of those sentenced to imprisonment receive sentences *of less than ten days*. Probation should care for at least half of this group. Thus, the number of commitments can be reduced by 92,601, or 28 per cent by the development of collection and probation agencies. These agencies must be properly financed, free from political domination, and administered by trained social workers.

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[1] Gillin, "Criminology and Penology," pp. 572–573, The Century Company, 1926; Butler, The County Jail and the Misdemeanant Prisoner in *The Journal of Social Forces*, vol. II, pp. 222–223, January, 1924; Queen, The Passing of the County Jail," pp. 20–40, The Collegiate Press, Menosha, Wis., 1920.

The second essential part of a constructive plan would include state treatment of all convicted misdemeanants in need of institutional care. Just as in dealing with long-term offenders the states have developed different institutions for the treatment of the various classes of offenders, so in the care of misdemeanants the state should assume responsibility and develop the institutions necessary to deal scientifically with the different types. Such a plan means that the individual offenders must be examined and studied with the object of discovering what kind of treatment promises to produce the best results, keeping in mind the protection of society and the welfare of the individual delinquent. It involves the establishment of institutions fitted to the needs of the different types of misdemeanants. Several states have developed institutions for defective delinquents. Scientists are now considering the need for institutions for dealing with psychopathic individuals.

Some of the misdemeanants should be sent to the state hospitals for the insane, others should go to colonies for the epileptics and the feeble minded. Every study of misdemeanants has revealed the existence of a goodly number of such individuals. The treatment of sick people as criminals should stop. It is as much a manifestation of superstition as the burning of witches or the whipping of the insane.

The careful study of the misdemeanant, as it is being carried out in Massachusetts, will prevent the repetition of such cases as the one described in a report of the Crime Commission of New York State. Joseph G— began appearing before the courts when he was seven years old. He was before the juvenile court four times between 1907 and 1911, was sent to the House of Refuge three different times between 1911 and 1915, sentenced to Elmira Reformatory in 1915, to Sing Sing in 1916 for one year, to a county penitentiary in 1918, again to the same institution in 1920, again to Sing Sing in 1922 for four and a half years, while still on parole sentenced to the state prison for life for attempted burglary. He is now twenty-seven years old and a drug addict. Practically every correctional agency had a chance to do something for this man, but these agencies failed to solve the problem. To-day society does not know whether Joseph G— is feeble minded, psychopathic or insane.[1]

A state clearing house for the diagnosis and study of selected offenders, the reduction of the number committed for non-payment of fines, and the elimination of sentences of less than ten days would leave a group of misdemeanants, fairly normal physically and mentally, able bodied, but lacking in training for any useful occupation. For this group the industrial farm, such as Indiana has established, would undoubtedly be best fitted. An institution located on a large tract of land, and also equipped with workshops and rooms for trade instruction, could give employment in farm work and training for various trades and occupations. It should not be of the old monumental cell-block form of construction. Simple, substantial buildings designed with reference to sanitation rather than for security are all that are necessary. An industrial farm is a flexible form of institution that can be adjusted to the use of different groups of inmates. It should not be constructed on too large a scale. Five hundred persons are as many as one superintendent can handle successfully. Mass inprisonment should be carefully avoided.

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[1] *Individual Studies of* 145 *Offenders by the Subcommission on Causes and Effects of Crime*, The Crime Commission of New York State, 1928, quoted in *The Social Service Review*, vol. III, pp. 159–161, March, 1929.

No women should be committed to a penal institution mainly or partly occupied by males. Women should have an institution of their own, but the treatment need not be different from that given to men. The most successful institutions for women are of the industrial farm type. The recent trend in reformatory work for women has taken the form of an industrial farm or colony to which all offenders are sent.

Assuming that the plan is adopted, the form of sentence or commitment should vary with the type of offender. An indeterminate sentence, with no minimum or maximum limits, should be given to defective delinquents and to psychopathic individuals. Drunks and vagrants should also be given indeterminate sentences with a maximum provision long enough to insure a cure or to develop habits of work. Extremely short sentences should be avoided, and probation or the payment of fines by installments substituted. A judge should be given power to impose a definite sentence or an indeterminate sentence with or without a maximum, depending upon the type of offender. The basis for such sentences is to be found in the need of protecting society rather than in the antiquated theory of equating crime with pain.[1]

Immediate Steps

To build sufficient state institutions to care for all misdemeanants would cost a great deal of money and we are by no means agreed as to the different types of institutions that are required. For the states to take over the county jails as England did in 1878 would produce so much protest that more harm than good might result. A long process of education would be necessary to accomplish it successfully. It is also very doubtful if a single state now contains enough decent jails to form the nucleus of a state system. We must undertake the substitution of state for local institutions gradually. Indiana has established a state farm for all misdemeanents sentenced for over thirty days. Massachusetts has developed at Bridgewater a state institution for selected classes of misdemeanants. Neither state has entirely eliminated the use of local institutions for sentenced prisoners. Both plans are decidedly worth while. Either plan may be followed profitably by other states, although the Indiana plan is simpler and would result in a more rapid improvement in the handling of short-term offenders.

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[1] *Propagating Crime through the Jail and Other Institutions for Short-term Offenders*, report to the National Crime Commission, pp. 23–28, 1929; Queen, "The Passing of the County Jail," pp. 128–132, The Collegiate Press, Menosha, Wis., 1920; Cross, The Jail and the Misdemeanant in *The Survey*, vol. XXXV, pp. 93–94, Oct. 23, 1915, digest of the report, the full report is to be found in "American Prison Association, 1915," pp. 363–378, and in the *Journal of Criminal Law and Criminology*, vol. VII, pp. 379–392, September, 1916.

Another immediate step would be to give to the individual states more power over existing local institutions. Each state should give to some state department, board or commission the following powers with respect to jails and other local penal institutions:

a. To inspect and make public its findings.
b. To require uniform accounting and the making of prescribed reports.
c. To compel local authorities to submit for approval plans for new institutions and for the alteration of old ones.
d. To prescribe a regime covering food, clothing, exercise, work and cell accommodations.
e. To transfer prisoners from one institution to another at the expense of the local unit.
f. To close an institution on account of inability to maintain a reasonable regime.
g. To develop specialized local institutions through the power of transfer.

No state has all the powers listed above. Some have none. Thirty-two states have the right to inspect and to make public all their findings. This power is of little importance, in all but a few states, because of lack of authority to prescribe a definite regime and to require certain standards of care in the treatment of prisoners. State boards of corrections, departments of public welfare, and other boards and commissions, must furnish expert leadership and guidance, and must be given sufficient control to enable them to function efficiently.

According to Professor Gillin "the conclusion of the whole matter of the treatment of misdemeanants is that they, just like felons, must be treated according to the principles of penology. The time ought to come when the distinction between felons and misdemeanants would be entirely done away with, when each individual should be sentenced to the institution in which he can be most appropriately cared for and, if possible, prepared to return to society, or where he can be kept indefinitely for the protection of society. At the present time the distinction between misdemeanants and felons gives us two sets of penal institutions, for which there is no justification in either economics or sociology."[1]

The establishment of a state industrial farm like the one in Indiana would make a beginning in the elimination of the distinction between felons and misdemeanants and would also go a long way in the removal of what Sutherland calls "the fundamental objection to jails at the present time—that in all of them persons awaiting trial are held in the same institution with those serving sentences." Since the number serving sentences and awaiting trial are about the same—43 per cent awaiting trial in New York, 58 per cent in California and 57 per cent in Illinois—the removal of those serving sentences would leave the jails for those awaiting trial. The objectionable association of persons awaiting trial and convicted offenders will automatically cease. The proverbial two shots with one stone will be accomplished. The moral deterioration frequently resulting from such contacts will be avoided. A long step in the reform of a situation that is a national disgrace will be taken. We shall still be a long way from the solution of the problem of the short-term offender, but we shall actually have made a beginning.[1]

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[1] Gillin, "Criminology and Penology," p. 576, The Century Company, 1926.

Review Questions

1. What is the importance of the jail as a penal institution?
2. What other local county and municipal penal institutions are there and what is their importance compared with the jail?
3. What is the best definition of a jail?
4. What has been the result of the fee system for feeding prisoners?
5. Explain the description of the jail as a school of crime.
6. Compare the expenditure for misdemeanants with that for serious offenders in Massachusetts.
7. What is our typical penal institution in the United States?
8. Describe the composition of the population of county penal institutions.
9. What are the arguments for the elimination of the jail?
10. Describe the experience of Illinois and Pennsylvania.
11. Explain how the movement for a prison farm developed in Indiana.
12. What was the relation of the institution to the county jails?
13. How did its establishment affect the commitments to county jails?
14. What other plans have been developed for dealing with minor offenders?
15. Describe a constructive plan for dealing with misdemeanants.
16 What are some immediate steps that may be taken?

Topics for Investigation

1. Study the facts about American jails. See Fishman, "Crucibles of Crime."
2. Describe the treatment of the misdemeanant in Indiana. See Butler in *The Journal of Social Forces*, pp. 220–225, January, 1924.
3. Discuss conditions in the Cook County Jail as contained in the survey directed by Kirchwey. See *The Survey*, pp. 606–607, Aug. 15, 1922, and pp. 707–709, Sept. 15, 1922.
4. Describe the labor colony plan worked out in Europe. See Kelly, "Elimination of the Tramp."
5. Discuss the passing of the county jail. See Queen, "The Passing of the County Jail."
6. Describe the condition of the county jail in Connecticut. See Brown in the *Journal of Criminal Law and Criminology*, pp. 369–374, November, 1926.

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[1] SUTHERLAND, "Criminology," p. 219, J. B. Lippincott Company, 1924.

7. What is the fundamental objection to jails at the present time? See Sutherland, "Criminology," Chap. X.

8. What are Gillin's conclusions as to the character of the jail system? See Gillin, "Criminology and Penology," Chap. XXV.

9. Describe the condition of county jails in Iowa. See *Report of the Committee of the State of Iowa Department of Justice*, 1912.

10. Why must county jails go? See the *Journal of Criminal Law and Criminology*, pp. 151–154, May, 1923.

11. What conditions were found in Georgia jails? See *The Survey*, pp. 349–350, June 15, 1924.

12. Study the steps that led to the building of the new jail and criminal court building in Cook County, Ill. (Chicago). See *The Survey*, pp. 125–127, Apr. 15, 1929.

Selected References

1. Sutherland: "Criminology," pp. 211–237, 401–404, 471–472.
2. Gillin: "Criminology and Penology," Chap. XXV.
3. Robinson: "Penology in the United States," Chaps. III–IV.
4. Queen: "The Passing of the County Jail," Chaps. I–II.
5. Fishman: "Crucibles of Crime," Chaps. I–II, XI–XII.
6. Kelly: "The Elimination of the Tramp," Chaps. III–IV.
7. "American Prison Association, 1923," pp. 238–250, 282–303.
8. "American Prison Association, 1924," pp. 255–286.
9. "American Prison Association, 1925," pp. 170–206.
10. The Cook County Jail Survey, *The Survey*, vol. XLVIII, pp. 606–607, 707–709, 1922.
11. *Propagating Crime through the Jail and Other Institutions for Short-term Offenders*, a report to the National Crime Commission, 1929.
12. Robinson: The Relation of Jails to County and State in the *Journal of Criminal Law and Criminology*, vol. XX, pp. 396–420, November, 1929.

CHAPTER X

PRISONS IN THE UNITED STATES

At the close of the Revolutionary War there were no institutions similar to the present state prisons. The county jails were sometimes worse and rarely better than in England at the same time. In Connecticut for more than fifty years after the peace there was an underground prison which surpassed in horrors the Black Hole of Calcutta. It was in an old worked out copper mine and known as Newgate Prison. It was the first state prison, but naturally the state has never taken any pride in it. In 1785 Massachusetts provided that persons sentenced to hard labor should serve on Castle Island, a military post in Boston Harbor. In 1803 a new prison was authorized. The movement spread rapidly and by 1816, there were state prisons in New York, New Jersey, Virginia, Vermont, Maryland and New Hampshire, in addition to the prison reform movement in Pennsylvania, which finally produced the Pennsylvania system.

There was little need for anything like the modern prison in America before the end of the eighteenth century. The colonies were sparsely settled and there were no communities that would be regarded as more than large towns at the present time. The class conditions of the older European countries were almost entirely lost sight of in the new world. No institutions suitable for imprisonment had been constructed even in England and the difficulty of building such institutions in America was greater, while the demand for them was less pronounced. No influence like the failure of transportation to America compelled attention to the treatment of criminals, who could not be dealt with either by capital punishment, or by means of shame and humiliation, or by financial penalties. Imprisonment came about rather as the result of the development of humanitarian feeling.

The Quaker Influence

At the end of the seventeenth century the English criminal code was in operation more or less generally in all the English colonies in America with the exception of the Quaker colonies of West Jersey and Pennsylvania. The "Blue laws" of Connecticut provided for fourteen capital crimes and the Duke of York's laws in New York enumerated eleven capital offenses. These codes were not as severe as the English criminal laws of the time, but they compared unfavorably with the Quaker codes in West Jersey and Pennsylvania, where treason and murder were the only crimes punishable by death. Imprisonment at hard labor replaced the death penalty for the remaining capital offenses in the other colonies.

Although the Quaker laws did not continue in force for very long, it seems probable that their influence was largely responsible for the "movement for the liberalizing and humanizing of the criminal codes" that began immediately after the close of the Revolutionary War and spread from Philadelphia to the other states. This influence developed mainly along the line of the reduction of the number of capital crimes and the substitution of imprisonment at hard labor. It resulted from the aversion of the Quakers to the bloody punishments of the times.

During the colonial period, where the death penalty was not inflicted, corporal punishment was employed. The stocks, pillory, whipping, branding and the ducking stool were the usual methods for non-capital offenses. For minor delinquencies fines were exacted, and if the fines were not paid, corporal punishment was substituted. Imprisonment was rarely employed in the non-Quaker colonies. Nearly all who were held for any considerable length of time were debtors. The great proportion who were confined were persons charged with the commission of crime and were waiting for trial. Even the expense of imprisonment pending trial was felt to be too great, and the jails often were found inadequate for safe custody. The use of imprisonment as a method of punishment made slow progress. In New York the true beginning of imprisonment as a method of punishment was in an act passed in March, 1796, as a result of the recommendation of a delegation sent to study the contemporary reforms in Pennsylvania.

ORIGIN OF PRISON REFORM

The influences, which produced prison reform in America after the end of the Revolutionary War, were (1) the general movement for change and reform growing out of the French Revolution, and (2) the efforts to reform criminal law and penal administration by Beccaria and Howard in Europe and the Pennsylvania reformers in this country. These influences were transmitted from Pennsylvania and Philadelphia to the other states, giving rise first to the Pennsylvania System, and later to the variant from that system, which came to be known as the Auburn System.

A large number of Frenchmen had been in America during the Revolutionary War, had brought with them many of the ideas of Montesquieu, Voltaire, Turgot and Condorcet, and had, as a result, stimulated American interest in French thought. Furthermore, many leading Americans had been in Europe during the same period. Philadelphia, as the center of political life during the last quarter of the eighteenth century, was especially effected by European changes. Benjamin Franklin was a resident of France for a considerable length of time and was familiar with French thought. Montesquieu probably influenced the Constitutional Convention of 1787 more than any other foreign philosopher, and his followers must have been familiar with his ideas in regard to the reform of criminal law, as well as with his theory of the separation of governmental powers. Thomas Jefferson also came to Philadelphia soon after his return from France, where, like Franklin, he had become acquainted with French revolutionary ideas and leaders. Finally, Philadelphia had the traditions of Penn in prison reform. All of these circumstances made Philadelphia the focal point for the spread of programs of reform.

Another factor in prison reform in America during this period was the influence of John Howard, the English prison reformer. In his travels from 1773 to 1790 he visited the papal prison of San Michele in Rome, erected about 1704, and the prison at Ghent in Belgium, established in 1773, and his writings describe their construction and administration. These two institutions represent "the first clear anticipations of the modern prison system." His writings were well known in Philadelphia, and from them America gained knowledge of these institutions and of his work for prison reform. Howard's recommendations were adopted in the building of English jails and prisons and these, in turn, became models for the Philadelphia reformers. When, in 1790, the members of the Philadelphia Society for Alleviating the Miseries of Public Prisons undertook to inform the legislature, in order to secure an improved system of prison administration, their list of successful experiments was confined almost entirely to the new county prisons in England. The pamphlet prepared for the education of the legislators contained long extracts from Howard's works.

Two years earlier the society had written to Howard a letter in which its constitution was enclosed, and a request was made for "such communications" from him "as may favor their designs." The letter also "expressed the obligations" of the society for his great services in prison reform and "sincere wishes that his useful life may be prolonged." Evidently, the society was strongly influenced by Howard's work even in its origin. Howard's interest in reform in America is shown by a memorandum, which he left, in which he directed the payment of five hundred pounds in case of the establishment of a society similar to the Philadelphia organization during his life or within three years after his death.[1]

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last para.

THE PENNSYLVANIA SYSTEM

Individual
Confinement

The beginnings of reform in Pennsylvania are usually connected with the name of Richard Wistar, a Quaker, who, just before the outbreak of the Revolutionary War, had his attention called to the condition of the inmates of the jail in Philadelphia, where some of the prisoners had recently starved to death. He had soup prepared and distributed among the inmates of the jail. Others became interested and in February, 1776, there was formed the Philadelphia Society for Assisting Distressed Prisoners. Reforms might have begun at that time instead of in 1787 had not the outbreak of war, and the British occupation of the city, ended the activities of the society.

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[1] Adapted from BARNES, "The Repression of Crime," pp. 86–97, Geo. H. Doran Company, 1926.

After the treaty of peace, in 1783, a number of prominent citizens, among whom were Franklin, Rush, Bradford and Lownes, undertook to reform the barbarous criminal code of 1718. There was general agreement that the number of capital offenses should be reduced and Rush advocated the abolition of the death penalty. The result was a law passed in September, 1786, which substituted for the death penalty for some of the less serious felonies "continuous, hard labor, publicly and disgracefully imposed." The new law was not very satisfactory, and the publicity given to the labor of the prisoners brought their condition to the attention of a larger number of persons. These circumstances led to the formation of the Philadelphia Society for Alleviating the Miseries of Public Prisons in May, 1787.

The most active element in the new organization was composed of Quakers, and the leading representatives of the Pennsylvania system for over fifty years were Roberts Vaux and his son, Richard, members of the Society of Friends. Not more than one-half of the members were Quakers, and important contributions were made by Bishop White of the Episcopal Church, and by persons like Franklin and Bradford, who were not members of the new society. [The work of the society was divided into three parts: (1) the relief of the physical suffering of the prisoners; (2) the reform of the criminal code by reducing the number of capital crimes, and introducing imprisonment as the typical method of punishment in place of corporal punishment; and (3) the development of the Pennsylvania or separate system of prison discipline.]

Reform of the Pennsylvania criminal code began with the state constitution of 1776, which directed the substitution of imprisonment at hard and productive labor for the existing methods of corporal punishment. Further action was postponed by the outbreak of war, but the law of September, 1786, already referred to, continued the work by abolishing for most purposes branding, mutilation, the pillory, and whipping, in addition to reducing the number of capital crimes and the substitution of imprisonment for lesser felonies. The progressive policy was extended in 1788, 1789, 1790 and 1791, but it was not until April, 1794, that a thorough revision of the criminal code abolished the death penalty for all crimes except murder in the first degree, and substituted imprisonment or fines for all other crimes. The code of 1794 was the first important American break away from savage codes, was the pioneer reform in American states, and remained the basis of criminal procedure in Pennsylvania until 1860.

The reform of the criminal code making imprisonment the principal method of punishment compelled the establishment of a prison system in the place of jails and workhouses. By legislation from 1789 to 1794 the Walnut Street Jail in Philadelphia was converted into a state prison, and an addition was built to allow the confinement of the worst type of prisoners in separate cells—what eventually became the Pennsylvania system of prison discipline. The act of April, 1790, is usually regarded as the legal origin of the Pennsylvania system. The attempt to carry out the new method of punishment in the Walnut Street Jail proved an almost complete failure. The accommodations provided for the solitary confinement of the "more hardened and atrocious offenders," referred to in the law of 1790, were inadequate to care for all the prisoners of this class, and the large cells or rooms in which the remainder were housed became so overcrowded as to prevent scientific or effective administration. The failure to accomplish satisfactory results because of the conditions in the prison converted from the Philadelphia Jail was remedied by the legislation of March, 1818, and of March, 1821, which authorized the erection of two penitentiaries, both of which were to be constructed according to the principle of solitary confinement. No arrangements were made for employment, and it was only after a series of controversies from 1826 to 1829 that the complete Pennsylvania system was fully established.

The Auburn System

The situation in the state of New York after the Revolution was much the same as that which existed in Pennsylvania. Capital crimes were numerous and corporal punishment was the normal mode of inflicting vengeance upon the offender. Imprisonment as a method of punishment scarcely existed and no state prison had been established. There were, however, a number of persons who were disturbed by the conditions and were greatly interested in proposals for improvement. Naturally, their attention was attracted by the developments in Pennsylvania. Furthermore, the Philadelphia society definitely adopted a policy of publicity with reference to its work with the avowed purpose of bringing about reform in the penal laws of other states.

Roberts Vaux states that as early as 1794 the Philadelphia society determined to maintain "an extensive correspondence" with the executives of the different states in order to diffuse information and lead to reform. Such a communication from Philadelphia may have been behind the first message of Governor John Jay of New York, in which he recommended the reform of the criminal code.

In 1794 Thomas Eddy, a financier and philanthropist, and General Philip Schuyler, both of New York, visited Philadelphia, were entertained by the prison society, told of the reform work, and were shown the new system in operation in the Walnut Street Jail. They became convinced that Pennsylvania had made the reforms that were needed in New York. Aided by Ambrose Spencer, legislator and lawyer, and by Governor Jay, they introduced a bill into the legislature designed to reduce the number of capital crimes to murder and treason, to substitute imprisonment for corporal punishment, and to establish two state prisons, one in New York City and one at Albany. Their proposals were enacted into law in March, 1796, but only one of the prisons was built, the so-called Newgate Prison, erected in Greenwich Village and opened in November, 1797.

There were two serious defects in this institution which led to its abandonment after a few years. The congregate method of confinement was followed, and it was so small that it very soon became overcrowded, and the practice of pardoning arose in order to keep the prison population down to a number that it was possible to house under crowded conditions. Between 1797 and 1822, 5,069 convicts were admitted, and 2,819 were pardoned.

By 1816 the situation became so bad that a law was passed providing for the building of a new state prison at Auburn. The commissioners were "to build a state prison similar to the one now in use in the City of New York with such variations as they may think will best promote the interest of such institution." William Brittin, a carpenter by trade, was given immediate charge of construction work and became the first warden. The first wing of the new prison was erected with double cells and large rooms capable of receiving ten or more prisoners. In 1819 an act was passed by the legislature directing the confinement of certain classes of offenders in separate cells, and the construction of the second wing on the principle of solitary confinement of each prisoner. The outside cell construction later used in the Eastern Penitentiary of Pennsylvania was not employed, but the type that came to be known as "the Auburn or inside cell method of construction."

After consultation with the Pennsylvania leaders, the New York reformers secured the passage of a law in April, 1821, directing the selection of a number of the "oldest and most heinous offenders," who were to be placed in solitary confinement for the purpose of observing the disciplinary effects. A second class was to be placed in separate cells for three days each week, and the younger offenders were to be allowed to work in the shops six days each week.

Eighty convicts were selected in December, 1821, to furnish the material for this experiment in discipline and administration. The method used was not "the developed Pennsylvania system of solitary confinement at hard labor in two large cells and a small outside yard, but solitary confinement in a single small inside cell without any labor or other adequate provisions for physical exercise." The experiment continued during 1822 and 1823, proving a hopeless failure and causing much sickness and insanity among the convicts in solitary confinement. In 1823 and 1824 Governor Yates pardoned most of those remaining in solitary confinement, and a majority of the legislative committee of investigation appointed in April, 1824, reported that nothing more could be hoped for from that method of procedure.

Meanwhile the prison administration at Auburn had been developing a disciplinary and administrative plan which was to become one of great historical significance—the Auburn system of congregate work by day and separation by night with rigidly enforced silence at all times. Warden Brittin died in 1821, and he was succeeded by Captain Elam Lynds, who, with the aid of his deputy and architect, John Cray, and with the encouragement of Gershom Powers of the Board of Inspectors, worked out the new plan. The prisoners were allowed to work in groups in the shops and yard during the day and were then locked singly in separate cells by night. Silence was enforced at all times, and the discipline was extended by the use of the lockstep, special rules in the dining hall and the employment of whipping as a means of preserving order and of securing obedience.

About the time that the Auburn system was taking shape, the legislature by the act of March, 1825, authorized the establishment of another prison near New York City to replace the Newgate Prison in Greenwich Village. The new prison was built in three years under the direction of Captain Lynds, and in May, 1828, it was ready for occupancy. It was at first designated as the Mount Pleasant Prison, but it came to be known later as Sing Sing. Under that name it has become famous in penal annals in the United States. It was conducted from the beginning according to the Auburn system.

The Struggle between the Two Systems

Actually the penal reforms in New York should be regarded as "an adaptation and imitation of the Pennsylvania reforms and the Auburn system, a variant of the Pennsylvania system." In course of time the Auburn type of discipline came to be thought of as an independent system and vigorous competition developed between the two systems. While the Pennsylvania system was adopted by a number of states, it was soon given up by all except New Jersey, where it lasted until 1858. Because of the economic advantages of the Auburn system, and chiefly because of the tireless advocacy of Louis Dwight of the Prison Discipline Society of Boston, it triumphed almost completely over its rival in the United States. The Auburn system came to be the prevailing system of prison management in this country. In contrast with the development in

America, most of the official European investigators reported in favor of the system of solitary confinement, and the Pennsylvania system was widely adopted in Europe between 1830 and 1860.

A bitter controversy was waged from 1825 to 1860 between the partisans of the two systems. The main conflict was between the Prison Discipline Society of Boston for the Auburn system, and the Philadelphia Society for Alleviating the Miseries of Public Prisons for the Pennsylvania system. After its organization in 1845, the Prison Society of New York supported the Boston society in advocacy of the Auburn system. Louis Dwight organized the Boston society in 1825 and directed it until his death in 1854. He had been educated for the ministry, but an injury to his lungs in a chemical laboratory prevented him from preaching. In 1824 he made a tour on horseback throughout the eastern part of the country distributing Bibles to prisoners. He observed with horror the abuses in the prisons and he decided to devote his life to their improvement.

Dwight's reports give the best contemporary account of the penal system of his day, although they are characterized by violent criticism of the Pennsylvania system. He was accused of unfairness by his opponents, but a careful consideration of the pamphlets of both sides leads to the conclusion that neither was qualified to judge the other. Both parties to the argument were partisan and unscrupulous in their use of statistics. It was a case in which neither the pot nor the kettle was justified in calling the other black.

Most of the leaders in the reform of criminal procedure and penal administration took a definite position on one side or the other of the controversy. Roberts Vaux, Edward Livingston, Francis Lieber, Dorothea Dix, William Foulke, and Richard Vaux defended the Pennsylvania system, while Dewitt Clinton, Gershom Powers, Amos Pillsbury, William H. Seward, E. C. Wines, Theodore Dwight, Frank Sanborn, and Gideon Haynes supported the Auburn plan. The controversy gradually died out after 1860.[1]

STATE PRISONS

The model institutions for the two prison systems were the Eastern Penitentiary for the Pennsylvania system and the Auburn Prison for the system developed in New York; the former being referred to frequently as the *Separate* and the latter as the *Congregate* system. The cornerstone of the Eastern Penitentiary was laid in 1823 and the building was completed in 1829. When erected it was just outside of the city, but many years ago the city entirely surrounded it. The solitary confinement or separate system led to the development of a curious type of building—a series of corridors with cells on either side radiating from a common center. There are now twelve corridors, some of them with two tiers of cells but most of them with one. A great amount of space is used up by the long buildings spreading in all directions from the center. John Haviland was the designer of the plan for the penitentiary. He built, besides the Eastern Penitentiary, the second Western Penitentiary, the New Jersey State Prison at Trenton, the Rhode Island Penitentiary and many county jails in Pennsylvania and adjoining states. No exact information exists as to the sources of the plan for the Eastern Penitentiary. In a general way it included a combination of the radiating wings or cell blocks of the Ghent Prison and of the outside cells of the papal prison of San Michele in Rome. In 1910 there were 728 cells for more than 1,500 prisoners, so that the separate system then existed in name only, as had been the case for many years. The congregation of prisoners was permitted by law in the Western Penitentiary in 1869, and the same privilege was granted to the prisoners in the Eastern Penitentiary in 1913. The solitary system exists only in punishment cells in most of our prisons at the present time.

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[1] Adapted from BARNES, "The Repression of Crime," pp. 97–115, Geo. H. Doran Company, 1926.

Auburn Prison, the other model institution, was built in 1816, and is one of the oldest prisons in the country now in use. About fourteen acres are enclosed within high stone walls. The square tower in the center and the wings on either side are part of the original buildings. Extensions have been made at right angles to these buildings for additional cell houses, and, in line with this extension, shops have been built around the prison, which form a quadrangle now used for recreational purposes. Over the square center tower is the statue of a Continental soldier, which, from its material, has always been known as "Copper John." "The oldest part of the north wing is the original 'Auburn cell block,' which has served as a model for almost all American prisons. The building is a shell, inside of which are two rows of stone cells, back to back, in five tiers."

Captain Elam Lynds, who devised the main features of the Auburn system and who constructed the new prison at Mount Pleasant, on the Hudson, with prison labor, was a man of great energy and force of character. He was a veteran of the War of 1812, and his military experience was of great service to him, when he removed the convicts from Auburn to the site of the new prison where they were employed without any barriers. His work at this place has been mentioned with great approval by many writers. Such an undertaking was regarded as a remarkable achievement at that time, when prison systems were in their infancy and severity was regarded as necessary to protect society from criminals.

The new prison at Mount Pleasant was first known by that name, but sometime in the middle of the last century the name was changed to

Sing Sing, and under the new name it has become inseparably associated with the imprisonment of convicts, as the name of Botany Bay is linked with the transportation of felons to Australia. Like Auburn prison it is one of the oldest prisons in the country. Additions were made from time to time, but the cell blocks retained their original form, and finally were condemned as insufficient and entirely unsuitable. The old prison was built on low ground along the river. Comparatively recently a new prison plant has been constructed on the hill above the old prison. The buildings of the new plant are only partially completed.

Massachusetts erected its first prison at Charlestown in 1805. The building was designed and constructed by Charles Bulfinch, a celebrated architect, who built the State House in Boston and also designed part of the Capitol in Washington. The building was made to keep prisoners in small groups and was considered to be as secure as any in the country when constructed. When it became necessary to increase the capacity of the prison, an extension or wing was built, containing small separate cells like Auburn. Various enlargements were made up to 1866. Ten years later a new prison was established at Concord and occupied from 1878 to 1884, when it was taken for a reformatory. Later extensions and additions were made to the Charlestown institution. After continued failure to make provision for the removal of the prison to another site, a new prison is now under construction.

Gideon Haynes was warden of the Massachusetts state prison from 1858 to 1871. He made many important changes in the discipline. He abolished the lash, was the first warden who allowed the prisoners to assemble for recreation on a holiday, July 4, 1864, and persuaded the inspectors to discard the striped clothing long before any other warden had proposed to do it. He was one of the chief critics of the Pennsylvania system and he wrote many reports defending the Auburn system. He maintained that during a term of years the death rate of the Eastern Penitentiary was nearly double that of the Massachusetts prison.

In 1858 Illinois built a state prison at Joliet, which by successive additions and alterations has become one of the largest in the country. It has been managed by capable wardens, and many officers trained there have reached commanding positions in the service of other states. A second prison was erected in 1880 in the southern part of the state. In 1907 a commission was appointed by the legislature to develop plans for and undertake the construction of a new prison. Construction on a new plant was begun at Stateville, six miles from Joliet, in 1916 and by August, 1925, there had been completed the wall around the prison, one shop, the mess hall and kitchen, three of the eight proposed cell houses, the isolation building, the power plant, a building for a receiving station and the corridors connecting the buildings. A fourth cell house was partly completed.

The new prison is located on a tract of 2,193 acres. The walls, 33 feet high, enclose 64 acres. At about the center of this area stands a circular mess hall or cafeteria, capable of handling 2,100 persons. The plans call for eight circular cell houses around the mess hall. The mess hall is connected by enclosed passageways with the cell houses, the receiving building in front and workshops and power plant in the rear. The mess hall corresponds to the hub of a wheel, the spokes form the passageways and the eight cell houses are located at points on the rim. Each cell house accommodates 247 prisoners. The cells are on the outside, and, from a central station, officials can see each cell at all times. The plan is a radical departure from the type of prison construction that has been followed throughout the country during the past century.

In California the prison system had a curious and interesting beginning. The rapid growth of population, following the discovery of gold in 1849, made it impossible for the inefficiently organized government to cope with the conditions that developed. As a result vigilance committees were formed which administered law with little formality. Many offenders were promptly sentenced to death. No time was wasted on preliminary imprisonment and strong jails were not needed. But there remained some offenders to whom so severe a penalty as death could not be awarded. In such cases one of the state senators agreed to take charge of the offenders for a certain sum. He was to have the benefit of their labor, and to see that they were properly housed, fed and guarded. He sublet his contract to a man who gained notoriety in a few years as the keeper of what came to be known as "McCauley's gang." For safekeeping these prisoners were lodged on an old ship that had brought gold seekers around Cape Horn and had been abandoned in San Francisco Bay. The prisoners were placed on the ship at night and worked on shore in gangs in the day time. Originally, the operations were on the Sacramento River, but, after a while, they were moved down to the bay. In a gale of wind the ship became unmanageable, drifted across the bay and grounded on San Quentin Point. Being unable to get the vessel afloat again, McCauley built barracks on the point. He was led to take this step by the fact that near by there was an abundance of brick clay. This arrangement continued until 1856, when the state purchased the whole establishment from McCauley.

The origin of the prison is unique and the prison buildings are novel in their design. The cells in the old cell blocks are like those of most prisons, except that they have no cell house over them. Each cell door opens directly to the outer air. The whole premises are surrounded by a high boundary wall.

Many curious stories are told about the early days of the prison. It is said that visitors were freely admitted so that all sorts of excesses were possible. That condition did not long continue after the state took charge.

Like many old plants, San Quentin, at the present time, is a curious combination of modern and antiquated buildings. The new commissary building and cell houses will, when completed, make one modern section. One cell house was completed in 1912, while two others, partly built at the same time, remained untouched in August, 1925. In the old cell houses the cells vary in size. Those planned for one man now have two. There are twenty-four "tanks" or cells for from three to five men, and four cell-like rooms with thirty-two men in each. None of these has any plumbing. In August, 1927, there were over 3,700 prisoners, including ninety-seven women, making it one of the largest state prison in the United States.[1]

STATE PENAL SYSTEMS

The Eastern Penitentiary, Auburn Prison, Sing Sing, the Massachusetts State Prison, Joliet and San Quentin prisons are typical examples of the development of state prisons since their origin after the close of the Revolutionary War. There are now 61 state prisons with a total population of 61,825 on January 1, 1923, and with 24,255 commitments during the year. Prisons have been established in every state except Delaware where the Newcastle County Workhouse, the City Jail of Wilmington and the state prison form one institution in which all inmates are treated alike, although they are somewhat separated in the different wings. The prison is situated on a farm about five miles from Wilmington. The prison system is rather more recent in the southern states because of the climate and the existence of the race problem. The prison farm has attained its greatest development in the South.

Several states have more than one state prison or penitentiary—California and Illinois have two, Pennsylvania has three and New York has four. State prisons have become a permanent feature of the state penal systems. Great changes have been made in discipline, management and employment, and provision has been made for libraries, schools and recreation. Just as the state prison developed from the old county jail, a number of specialized institutions for special offenders have grown out of the prison. These comprise institutions for juvenile delinquents, for insane delinquents, for young adults, for women and, very recently, for defective delinquents. Probation, the indeterminate sentence and parole have also developed as additional methods of dealing with offenders.

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[1] HENDERSON, "Penal and Reformatory Institutions," pp. 27–67, The Russell Sage Foundation, 1910; BARNES, The Evolution of Penology in Pennsylvania, pp. 141–146, Bobbs-Merrill Company, 1927; LEWIS, "The Development of American Prisons and Prison Customs, 1776–1845," Chaps. VIII–XI, XIII–XXI, The Prison Association of New York, 1922; "Handbook of American Prisons, 1926," pp. 120–121, 191–192, 273, 440, G. P. Putnam's Sons, 1926; ROBINSON, "Penology in the United States," Chap. V, John C. Winston Co., 1921; LAWES, "Life and Death in Sing Sing," pp. 191–222, Doubleday, Doran & Company, Inc., 1928.

In many of the larger states a department of public welfare has been created which has charge of the charitable and correctional institutions. In New Jersey there is a state board which appoints the commissioner. In Pennsylvania the head of the department of public welfare is appointed by the governor, but the department has no authority over institutions except in the matter of industries. In Illinois the state welfare department is in the hands of a director or commissioner. In other states it is in the hands of a board of from three to five members, who give their entire time to the state, as in Iowa. In Pennsylvania every prison has its separate board of trustees which appoints the warden and determines policies. In several states a board appointed by the governor has control of the prison, and appoints and dismisses the warden, although this is usually the prerogative of the governor.

The key to the prison is obviously to be found in the warden. Originally little more than a jailer, the warden today is responsible for the safe-keeping, housing, clothing, feeding, health, education and industrial employment of a prison population varying from a few hundred in small prisons to over three thousand in some of the larger prisons. He must frequently work with inadequate appropriations, a defective plant, and inherited subordinates, who may not give hearty cooperation. He is subject to criticism easily aroused, often inaccurate and unintelligent and not infrequently politically inspired.

There is a small group of wardens that may be called "professional"—men who have been wardens in several states, or for a considerable period of time in one state. There are a few "military wardens," men with army experience, and a few who have had experience as police executives. There are several wardens who were deputies, and some of these came up through the ranks of the guards. Especially in the far West a considerable number have been sheriffs.

Some wardens have demonstrated executive ability in former positions, but, in many cases, the basis for appointment is political service to the appointing power. In some western states the term of the warden begins and ends on the same date as that of the governor, and the appointment is regarded as primarily a reward for political service. In Oregon there have been eleven wardens in nine years. In some other states the influence of politics in the appointment seems to have been pretty completely divorced from the prison system. This development has been more pronounced in the East than in the West.[1]

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[1] "Handbook of American Prisons, 1926," pp. 8–13, G. P. Putnam's Sons, 1926.

FEDERAL PRISON SYSTEM

The Constitution of the United States makes no provision for the punishment of crime other than the violations of federal laws as they affect international relations, cases of admiralty and maritime jurisdictions, and relations between the states, between citizens of different states, and between a state or the citizens thereof and foreign states, citizens or subjects. All other matters relative to crime and the punishment of crime come under the jurisdiction of the states. Consequently, the number of prisoners held directly under federal control has been restricted to military and naval prisoners, and to men convicted of interfering with the mails or stealing stamps, pension frauds, infringement of patent rights, and the offenses of the frontier—cattle stealing and fraudulent registration of homestead rights. In addition, the policy of the federal government has further limited the number of prisoners for the control of which it is directly responsible by boarding out its prisoners in state and county institutions. As a result, the development of the federal penal system has been relatively unimportant until comparatively recently, and we have not looked to the federal government for leadership in prison matters.

Congress in 1821 directed that federal prisoners should be quartered in state prisons subject to the approval of the state, and at the same time such prisoners were placed in the charge of United States marshals under the direction of the federal judges of the various districts. Thirteen years later it was enacted that all prisoners held in state institutions should be subject to the same treatment as the prisoners of the state or territory in which the institution was situated. Territorial prisoners were brought under the jurisdiction of the attorney-general in 1871. United States marshals were made responsible for the enforcement of all rules and regulations made by the Department of Justice.

In 1887 the federal government was required to make further provisions for its prisoners, when it was enacted that the government should not contract with any person or corporation for the labor of prisoners and should not permit prisoners to remain in any institution where the contract system was in operation.

Responsibility was placed upon the Secretary of the Interior for federal prisoners in 1854, when the warden of the penitentiary of the District of Columbia was instructed to make an annual report to him. Further duties were added in 1874 and 1882.

In 1891 the Attorney General and the Secretary of the Interior were jointly directed to purchase three sites for prisons for persons sentenced to one year or more of hard labor by any United States court. They were jointly to select the sites and erect the buildings, but the attorney-general alone was charged with the expenditure of $100,000 for the equipment of workshops where the prisoners were to be employed exclusively "in the manufacture of such supplies for the government as can be manufactured without the use of machinery." The attorney-general was given control over these prisons and power to appoint the necessary officers and to arrange for the transportation of prisoners, while expenses for marshals were to be paid from the judiciary fund.

The Department of State was brought into the prison situation in 1896, when it was provided by law that the United States should become a member of the International Prison Commission, the commissioner to be appointed by the President, "under the Department of State." Each succeeding Congress has made appropriation for the expense of this commissioner, and for the proportionate expense of the Commission for the United States.

The Secretary of Labor also has his share in connection with the federal prison system. In 1914, "he transmitted to Congress a compilation of all federal and state laws relating to convict labor, including all legislation regulating the sale and transportation of all convict-made goods, in so far as they relate to interstate commerce; and information as to the effect on free labor of the sale of convict-made goods, together with a description of the industries in which convict labor is employed and the value of the product of such labor." This report was in response to a Senate resolution passed in November, 1913.

Summing up the situation, it appears that the State Department, the Departments of Labor, of the Interior and of Justice are all involved in some functions in connection with the federal penal system. The Department of Justice has full charge of all federal penal institutions and of the federal prisoners confined in state, county and city prisons and also of the Bureau of Criminal Identification. The United States marshals under the federal courts have supervision of prisoners held for trial.

There is need of the centralization under one responsible head of all the scattered activities to prevent duplication of effort, waste and inefficiency. A federal office of prisons under a commissioner should be established at Washington with authority over all federal prisons and prisoners. Such centralization of control would make possible the establishment of a clearing house system and the development of a comprehensive scheme of institutions. The federal prisons could then become models for state institutions. "The Department of Agriculture is spending millions to exterminate insect pests yet not one penny is at present devoted by the federal government to the study of human pests." A federal office of prisons could conduct scientific researches into the causes of crime and do for penology what the Department of Agriculture is doing for the farm industry.[1]

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[1] "The Prison and the Prisoner: A Symposium," pp. 83–92, Little, Brown & Co., 1917.

FEDERAL PRISONS

Federal prisons are of two kinds: civil and military, the latter including both army and navy prisons. The civil prisons are three in number: Atlanta, Georgia, Leavenworth, Kansas, and McNeil Island, Washington. The army prisons are situated at Fort Leavenworth, Kansas, Governors Island, New York, and Alcatraz, California. The naval prisons are at Portsmouth, New Hampshire, Paris Island, South Carolina, and Mare Island, California. A large number of federal prisoners, usually those sentenced for periods of a year or less, are confined in state and county institutions.

The civil prisons are under a bureau of the Department of Justice, headed by a superintendent of prisons, who exercises general supervision over them and less directly over the federal prisoners in state and county prisons. Unfortunately, the administration of the federal prisons continues to be a part of the political spoils system.

In 1921 the Attorney General appointed as superintendent of prisons a man whose only qualification was that he was a brother-in-law of the President. Subsequently, the warden of Atlanta Prison, an official of experience, was removed and the Attorney General announced publicly that a threatened split in his political party in Oklahoma had been averted by the appointment of the leader of one faction to the wardenship at Atlanta. The warden thus appointed proved so unfit that he was allowed to resign, and an Ohio politician was put in his place. The new incumbent was later convicted and sentenced to prison for extorting money from prisoners for special favors.

The federal prison was established at Leavenworth in 1863 in some of the buildings now used by the United States Army Disciplinary Barracks. Work on the present plant began in 1904 and construction has continued intermittently since that time. This prison is one of the most seriously overcrowded in the country. The industries are entirely inadequate. In order to give the inmates a little work, more men have been detailed to each department than can be employed effectively. A considerable number of men are used on new construction work, and a large prison farm employs some. A new shoe shop, designed to employ a thousand men, has recently been completed, but it will only partially solve the problem of the employment of about three thousand. The only other industries so far developed are a stone shop, laundry and tailor shops besides the usual maintenance shops.

Recent legislation, creating new offenses punishable by the federal government, has greatly increased the inmate population and there is no reason for believing that the increase has ended. To sentence men to prison at hard labor and then to send them to an institution, where overcrowding and idleness are as serious as at Leavenworth, may have consequences as serious to society as the crimes for which the prisoners are sentenced. Our "ordering and forbidding attitude" and reliance upon punishment as a cure for crime result in just such conditions as now exist at Leavenworth.

> The tragic consequences of the spoils system in the federal prison department, and the lack of any consistent policy is plainly evident throughout the whole institution, in the slow building of the plant, the tardy development of industries, and in the general absence of any plan or program.

The same evidences of a lack of policy and of neglect are even more obvious at McNeil Island. The buildings are surpassed by most of the smaller state prisons. The industries are entirely undeveloped, and, aside from maintenance work, there is little for the prisoners to do except to clear land. Such labor cannot possibly give any vocational training. In a report to the attorney-general in 1925, the warden stated that for the past ten years appropriations for the upkeep of the prison have not been in proportion to the increase of population. He added that for the past three and a half years he had been calling the attention of the department to the conditions, "but with very slight results."

A special committee of the House of Representatives on federal penal and reformatory institutions made a report in January, 1929. The committee stated that for the fiscal year ending June 30, 1928, there was an average daily population of federal prisoners of 18,606. For the last ten years this population has increased at an average rate of ten per cent a year.

> The committee found that the Leavenworth penitentiary now has within its walls more than twice the number of prisoners it is able to accommodate. The normal capacity of the Atlanta penitentiary is 1,712, and upon the day the committee visited there were 3,107 in the institution. In both of these prisons, there exists the vicious practice of "doubling up," or placing two men in a single cell. Inmates are sleeping in dark, ill-ventilated basements and corridors; improvised dormitories are in use; the kitchen and mess facilities are overloaded to more than twice their proper capacity. Not only do these institutions house more than can properly be accommodated, but they have now almost reached their absolute physical capacity, and the committee does not see how any more prisoners can be jammed within the walls.

In the opinion of the committee no more prisoners should be confined at McNeil Island, not only because it has reached its physical capacity but also because of the remoteness of its location. Only at the New Federal Industrial Institution for Women at Alderson, West Virginia, did the committee find sufficient facilities for the prisoners committed to the institutions. Temporary structures are in use to house the prisoners sent to Chillicothe, Ohio. This institution is the United States

Industrial Reformatory, and, by the provisions of the existing law, only prisoners between the ages of seventeen and thirty may be admitted.

In addition to the number confined in the federal institutions, there were, during the fiscal year 1928, an average daily population of 9,658 persons serving short sentences or awaiting trial in 1,100 county and city jails. The committee found in the county and municipal jails that it visited overcrowding and idleness. From information received it is led to believe that these same "deplorable" conditions exist in many of the local jails where short-term federal prisoners are confined. The federal government has little or no control over their discipline, employment or general care.

The superintendent of prisons supervises the care and treatment of all federal prisons and is responsible for the expenditure of over $8,000,000 annually. This work involves questions not only of physical care and discipline but also problems connected with the operation of prison industries, and the proper application of the techniques of penology and criminology. The office of the superintendent is only a small division in the Department of Justice, and the committee recommended that it be made a major bureau, and that the superintendent be given an adequate organization to assist him. There are only two inspectors to supervise the 1,100 non-federal institutions in which federal prisoners are placed. A sufficient number of inspectors should be employed to visit regularly all institutions in which federal prisoners are held, for the purpose of making sure that these prisoners actually receive the items for which the government pays and to assist in the improvement of the existing standards.

Furthermore, the committee expressed the opinion that under no circumstances should the institutions at Leavenworth, Atlanta, and McNeil Island be enlarged, but that as quickly as possible the population of Leavenworth and Atlanta should be reduced to not more than 2,000 in each prison. Only in this manner can the vicious practice of placing two prisoners in cells designed for one be ended. The committee also recommended that two new penitentiaries be established as soon as possible. One should be in the northeastern part of the country as near as possible to the center of commitment from the federal courts, and the location of the other should be determined by a board of experts.

Again, the committee believed that there should be established a hospital for the care of the criminal insane with 500 beds as a beginning. It also recommended that all prisoners on their admission to federal institutions be given a psychopathic examination.

Finally, the committee recommended that federal jails or workhouses be authorized to care for short-term and detention prisoners in New York City, Boston, Philadelphia, Baltimore, Cleveland, Cincinnati, Chicago, St. Louis and San Francisco. The first step in this direction has already been taken as the federal government has been compelled to establish a detention jail in New York City, because the city authorities are no longer able to provide accommodations.

The best method of promptly relieving the congestion in the federal penitentiaries, and in local jails, would be to extend the federal probation system. There are at present only six federal judicial districts out of ninety-two in which there are probation officers.[1]

PRISON CONDITIONS

In describing the development of state and federal prisons, there have been incidental reference to prison conditions. We must now try to estimate our American prisons and determine how they are actually doing their work. In 1925 representatives of the National Society of Penal Information visited twenty-eight prisons. Here are some of the comments of one of these men:

> There was the "reform" prison in Colorado, famous the country over for its road work. Prisoners—for stealing a handful of raw onions from the kitchen—shackled over the "horse" and flogged by a Negro guard wielding a leather strap on a flail handle. Prisoners who attempted escape, in stripes, the hair on one side of their heads clipped close, the other half growing long, a heavy ball and chain riveted to the ankle, wheeling the ball in a wheelbarrow all day in a circle under an armed guard. A "trusty" system shot through with insincerity and stool-pigeon spying. Distrust and suspicion masquerading under the name of honor. "Bad actors" relegated to the insane section, where sane and insane alike are controlled with iron rods and fire hose. An insane prisoner horribly beaten to death, his ribs crushed by heavy boots. This is the famous reform prison of Colorado. I heard the warden's attorney defend flogging on the ground that England permits it, although the records show that Colorado flogged more prisoners in one year than the whole of England. Today Tom Tynan of Colorado is probably the only flogging warden left outside of the extreme South.[2]
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> At Leavenworth we saw a prison crowded to almost double its capacity, with no industries for its population of 3,300 federal prisoners. Hundreds of men were quartered in semidark basements. A squad of prisoners with blowtorches patrolled the bunks ceaselessly, making war on vermin. Everywhere about the prison were massed throngs of idle men, literally falling over each other. In the laundry it was almost impossbile to reach the machinery. A shoeshop, to furnish employment for a thousand men, has been under construction for years. Prisoners, in such numbers as to make effective work impossible, covered it like pigeons on a grain mill. The Leavenworth officials, having

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[1] "Handbook of American Prisons, 1926," pp. 60–68, G. P. Putnam's Sons, 1926; Report on Federal Penal and Reformatory Institutions, House of Representatives, 70th Congress, 2d Session, *Report* 2303, Jan. 31, 1929.

[2] Tynam resigned in January, 1927. For a fuller account of conditions in Colorado see a report made by the National Society of Penal Information upon the invitation of Governor William E. Sweet in February, 1924.

no industries in which to employ their huge population, wisely prefer diffused to concentrated idleness.

It would be hard to find anything worse than the neglect from which our federal prisons suffer. The lack of industries and the overcrowding at Leavenworth and McNeil Island, Washington, are little short of scandalous, as is the federal policy of relieving congestion by "boarding out" prisoners to state prisons, with little concern for the type of prison to which they are sent.

Go to the Stillwater prison in Minnesota, the best prison plant of its kind in America with the best organized industrial system. Walk through it, one of the forty thousand visitors who every year gaze in admiration down the clear thousand feet of spotless cells and gape at the rushing modern shops. It is one of the two or three profit-making prisons in the country. It pays the prisoners $100,000 a year in wages, it is self-supporting, and it shows a profit of $40,000 a year. It is organized as industrial enterprises are outside; it has proved that prison labor can be made to pay, at least in the manufacture of binder twine. It seems a shame to criticize so perfect a plant, so smooth a machine. Yet in this machine the human element seems lost; the whole prison seems directed to the production of goods, not men. Its discipline is rigid and repressive: through most of the week strict silence is enforced. On a Saturday afternoon, when most of the prisoners are in the yard, you will see some fifty silent men sitting with folded hands in the mess hall under guard. They have broken the silence rule. The rest of the country has much to learn from Stillwater in the matter of plant and industries; much too in the matter of discipline. The acknowledged leader in the former, this famous prison is fifty years behind the times in the latter. And, after all, prisons are designed primarily to turn out men, not binder twine.

Go to its neighbor prison in Wisconsin. Walk through the contract hosiery shops and furtive eyes will steal a glance at you. The prisoners are not allowed to look up and, except for a few hours on Saturdays and Sundays, they cannot speak. We went to the punishment cells there and saw a man who had attempted escape. He had himself nailed into a packing case and almost got away. Clothed in stripes, he was lying on a board close to the wall and was shackled by the wrist to a sloping bar set in the wall. Well, what of it? In the Illinois prisons the man in "solitary" is handcuffed to the cell door (hands waist high) for twelve hours a day, and in Ohio he stands in a close-fitting cage . . . Wisconsin, too, is one of the few self-supporting prisons in the country. The hosiery contract *is* profitable.

There are some things on the brighter side, too. Some of them may be found in the very prisons I have been describing. There are the prison officials, scattered here and there over the country, who are sincerely trying to make their prisons effective training agencies, who understand human nature and are interested in their human product. There are the attempts that are being made here and there to make work and education and religion effective, to make discipline training for character as well as for conduct, to build for the day of release, to make good citizens as well as good prisoners. There is, for example, the excellent educational work at San Quentin, effective largely because of the cooperation of the Extension Department of the University of California. In the same prison there is the most complete and well-rounded medical and corrective surgical program to be found in American prisons. Out in the California mountains there is the best prison road-work system in the country.

Brightest of all, there is the system of training for citizenship by community responsibility in Sing Sing and Auburn, established twelve years ago by Thomas Mott Osborne, and going on continuously under successive wardens, and the application of the same principle in Delaware and Maine and parts of many other prisons. This is the most constructive idea injected into prison disciplinary methods in the last twenty years, yet no idea is so completely misunderstood and so loosely criticised.

But in the main, throughout the prisons of the country, the industries furnish little training for an honest, self-supporting life, education is only a polite bow to the law prescribing so many hours of school per week for convicts, and religion as a regenerative force is almost negligible.

As for discipline, with the gradual weakening of the "treat 'em rough" idea, few constructive measures have come in. Discipline today is largely mental lock step. It emphasizes adherence to rules. It teaches men to walk chalk lines which they will not find outside. It is satisfied with good conduct—good surface conduct—and does little to strengthen character.

"Well," my Eastern friends will say, "he has not come east of the Alleghenies with his dark tales." No, but only because I have visited the western prisons recently and because so little is known about them. In the East the prisons are less involved in politics perhaps than in the West, there is less downright complete idleness, the disciplinary methods are somewhat more modern, but there the superiority ends. We have little cause for self-satisfaction in most of our eastern states. There is, in fact, *not one prison in the United States today that is doing a complete, well-rounded job of fitting its prisoners for life outside.*

Why do our prisons fail? For the reasons which stand out in the prisons I have described. Too many wardens are small-caliber men, purely political appointees, or they are "playing it safe" if they happen to have progressive ideas. Too many plants are historic relics, unsuited to the uses of the greatest regenerative enterprise we have before us today. The legislatures are too often ignorant of the prison, too responsive to the pressure of manufacturers opposing new prison industries, and too fearful of "reformers" proposing new ideas. Education lacks equipment and skilled direction and purpose; religion lacks conviction and fire. Discipline is a glue holding a lot of automatons temporarily in an upright position; it is not an elixir entering men's moral fiber to give them stability of character. And, last of all, in spite of the indeterminate sentence laws men still come out of prison more or less automatically, whether they are really ready to emerge or not. Until we have an indefinite sentence, under which criminals remain in segregation until they are fit for free life, we shall not have established the cardinal principle of the whole attack on the problem. When we have such sentences and make our prisons agencies to train men for citizenship, we shall reduce considerably the number of prison graduates who do honor to their alma maters by bigger and better crimes.[1]

Another study of prison conditions is contained in a book by Frank Tannenbaum entitled "Wall Shadows." The author was sentenced when twenty-one years old to one year's imprisonment at Blackwell's Island for unlawful assembly during the unemployment agitation in New York City in 1913 to 1914. He was voluntarily confined in Sing Sing Prison and at the Portsmouth Naval Prison and made a transcontinental trip of prison investigation in 1920 during which he visited about seventy penal institutions.

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[1] MacCormick, *The Survey*, vol. LV, pp. 598–601, Mar. 1, 1926.

In a chapter on Some Prison Facts Tannenbaum considers the question of prison discipline. As a result of much agitation he believes that there have been "a few changes in methods, a possible reduction in the number of men punished, a relaxing of the rules a little in regard to talking and the lock step, the abolition of such things as the strait-jacket, and the abolition of what was once a common practice of hanging men up by the wrists and swinging their bodies off the floor." Not all prisons have whipping. "A large number still do—more than I expected—but old methods of punishment are still prevalent in practically all prisons. There is hardly a prison where solitary confinement is not practiced. In some cases solitary confinement is for a few months, in some cases for a few years; and in not a few there is such a thing as permanent solitary. Some prisons have a few men put away; some have as many as twenty; and in one case there are about fifty men placed in solitary for shorter or longer periods."

Practically all prisons have and use dark cells. It is not unusual to find from one to a dozen men in these cells, kept on bread and water.

> In most prisons—about ninety per cent—this punishment is added to by handcuffing the man to the wall or the bars of the door during the day—that is, for a period of ten to twelve hours each day that he is in punishment—the time varying from a few days to more than two weeks. In some institutions the handcuffs have been abolished and replaced by an iron cage made to fit the human form, which, in some cases, can be extended or contracted by the turning of a handle. A man put in the dark cell has this cage placed about him and made to fit his particular form—it is usually made so "snug" that he has to stand straight up in the cage. He cannot bend his knees, he cannot lean against the bars, he cannot turn round; his hands were held tight against the sides of his body, and he stands straight, like a post, for a full day, on a little bread and water—and for as many days as the warden or the deputy sees fit.

Tannenbaum describes a number of other methods of punishment used in a few institutions, such as the handcuffing of men in the punishment cells while they sleep as well as the continued occupation of underground cells for purposes of punishment. In a discussion of prison cruelty he points out the fact that to prison officials a prison is first of all a disciplinary problem. The inmates must be kept from escaping and held to orderly behavior. Hence the need of rules and the resort to an anti-social policy, each prisoner being cut off as far as possible from his fellows.

No rules and no watchfulness will prevent prisoners from breaking the antisocial regulations. Punishment follows and punishment increases the craving for association. Lack of obedience on the part of the men leads to brutality on the part of the officers. The bitterness becomes intensified on each side and the basis for cruelty is laid. Punishments must be made more severe and the limits of rational and moderate penalties are soon reached. Given the actual situation cruelty almost inevitably develops.[1]

The New Jersey Plan

The administration of American prisons is generally lacking in efficiency. This is due very largely to the fact that the prisons are regarded as "political plums," and for that reason the officers are not equipped for the difficult task that they have to perform. So long as politics are allowed to enter into the appointments of boards and officials, really efficient handling of penal institutions is impossible. The principle of political service as a basis of office holding in this country is so deeply embedded in our traditions that it cannot easily be destroyed. The state of New Jersey, as the result of an investigation made by a commission appointed in 1917, passed a law which centralized all responsibility for the management of the state charitable, correctional and insane hospital institutions, including the appointment of local boards of managers, in the hands of a Board of Charities and Corrections, consisting of nine members, eight of whom were to be appointed by the governor, and of which the governor himself was a member. The law also provided "that such central board shall exercise its powers of administration and the supervisory powers vested in it, through an expert commissioner to be appointed by it, and who shall be removable by it in its discretion, and that such commissioner shall have the power of appointing, subject to the approval of the central board, such expert deputies or bureau chiefs, not exceeding six in number, as may be authorized to assist him in the administration of his office." A little later the title of the new board was changed to The State Board of Control of Institutions and Agencies, but no important changes were made in its duties nor in its membership and organization.

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[1] Tannenbaum, "Wall Shadows," Chaps. I, III, G. P. Putnams Sons, 1922, Chap. I was first printed in *The Atlantic Monthly*, vol. CXXV, pp. 433–444, April, 1920. Other excellent and suggestive accounts of prison life and conditions are presented in Lowrie, "My Life in Prison," "Mitchell Kennerley, 1912; Jennings, "Through the Shadows with O. Henry," H. K. Fly Co., 1921; O'Hare, "In Prison," Alfred A. Knopf, Inc., 1923; Clark and Eubank, "Lockstep and Corridor," University of Cincinnati Press, 1927; "Handbook of American Prisons, 1926," pp. 23–30, G. P. Putnam's Sons, 1926; Thorton, The Pound of Flesh, in *The Atlantic Monthly*, vol. CXXXV, pp. 433–446, April, 1925, and Merely Justice, pp. 611–613, May, 1925.

New Jersey thus centralized policy-making powers in a state board of eight unpaid members, while there was decentralization of administration in the hands of unpaid boards of managers of the several institutions and agencies subject to the jurisdiction of the board. The legislature recognized that the success of the new plan depended for the most part upon the type of man chosen as commissioner. To accomplish this purpose it was provided that the commissioner should hold office at the will of the state board, that he might receive a salary equal to that of the governor of the state, and that in the selection of a commissioner the state board should not be restricted to residents of the state. Political considerations were therefore distinctly subordinated to experience and training in the choice of the commissioner.

Continuity of administration was also secured by the provision of the law that but three of the eight members of the state board may change during the term of any one governor and the governor under the New Jersey constitution is ineligible for reelection. Thus a change in the personnel of the state administration would not bring an immediate change in the administration of institutions. Apparently, New Jersey has gone as far as is possible to eliminate politics, while at the same time insuring an administration responsive to the popular will.

Eight divisions were established to assist the commissioner in the administration of the institutions and agencies. A biweekly conference of the superintendents of the institutions, known as the Administrative Council, and presided over by the commissioner, was held to discuss reports and various problems that arise in connection with the different institutions. In this way the institutions functioned as integral divisions and not in isolation as had formerly been the case.

Some of the advantages of a unified administration may be illustrated in connection with the problem of handling the refractory prisoner. Investigations and examinations have shown that such prisoners are either temporarily or permanently abnormal mentally. Special institutions for the mentally abnormal have developed methods of handling difficult patients without undue use of force. Correctional institutions have continued methods which were discarded many years ago in special institutions and have been ignorant of the great advances made in the handling of disciplinary problems without the constant use of brute strength. Under a system such as exists in New Jersey this information is made available by the regular conferences of executives of institutions.

One of the superintendents had developed a method for the conservation of clothing. After the superintendents of other institutions have heard him explain his plan, have visited the institution, and have seen it in operation, they can easily apply it. Conferences were held in Washington with the food experts of the Department of Agriculture. The dietaries and ration tables were formulated and were approved as practical and scientific from the standpoint of food values, selected with reference to the several classes of inmates. Scientific dietaries and ration tables were thus arranged for each institution. Again the advantages of united action are so apparent that no special emphasis is necessary.

The New Jersey plan has given a practical demonstration of the gains that can be made in institutional management by the elimination of political influence and the organization of administration upon an expert and business-like basis. Better care, better buildings and better human products result from such an administration. A four-year summary of the reports of The State Board of Control of Institutions and Agencies, covering the years 1918 to 1922 describes "the significant accomplishments under twelve heads" as follows:

(1) The establishment of a coordinated department in place of the investigational and reporting agency that preceded; (2) the specialization of state institutions in place of institutions with overlapping powers, functions and responsibilities; (3) the installation of a thoroughly modern and complete system of cost and consumption accounting; (4) the provision of administrative codes for each institution, establishing a merit system of assignment and promotion; (5) the establishment of a proper line of demarkation between the centralization of policy making and decentralization of administration; (6) the substitution of a program of treatment and prevention for a program of custodial care; (7) the establishment of a modern system of training, productive work, medical treatment and rehabilitation in place of private prison contract treadmill work; (8) the completion of adequate surveys of the problems of tuberculosis, insanity, feeble-mindedness, instability and delinquency in the state; (9) the establishment of a system of inspection and promotion of economical and humane administration of county, municipal and other public and private institutions; (10) the promotion of adequate cooperation between the departments of education, labor, health and institutions in demonstrating the social and monetary economy of administering institutions as community enterprises; (11) the establishment of a sound and economical building construction policy for the state; (12) the inauguration of a thorough and efficient system of informing the public currently through the medium of magazines, the press and motion pictures.[1]

The Massachusett's Department of Correction

The amendment of the constitution of Massachusetts in 1918 reduced the number of departments in the state government from 113 to 20.

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[1] Lewis, The New Jersey Plan in Operation, a reprint from *American Journal of Insanity*, vol. LXXVI, January, 1920; *Four Year Summary of Reports of the State Board of Control of Institutions and Agencies, New Jersey*, July 1, 1922; "Handbook of American Prisons, 1926," pp. 378–379, 389–390, G. P. Putnam's Sons, 1926.

As a result of the reorganization there emerged a Department of Public Health, a Department of Mental Diseases, a Department of Public Welfare and a Department of Correction. Each of these departments is presided over by a single executive officer called the Commissioner. The four commissioners meet in weekly conference. The business of the departments (such as purchasing, engineering) common to all is carried on under a Commission on Administration and Finance, but the professional work of the four groups is conducted by each department separately.

One of the primary functions of the department of correction is the supervision of the state penal institutions. The growth of these institutions has indicated the extension of the principle of classification of prisoners as an aid in the individualized treatment of the offender. There are the following institutions:

1. **The State Prison** for male prisoners serving sentences of two and one-half years and up. This is an industrial prison. Men are kept steadily at work producing articles for the use of the state and its governmental subdivisions. Automobile plates, shoes, tinware, aluminum ware, brushes, clothing, underwear, mattresses and iron beds are manufactured under the state-use system, and there is thus offered to the inmate a choice of vocational opportunities, in addition to the many trades, which may be learned as part of the maintenance operations. There is a printing shop where printing is done for other branches of the state service.

2. **The Massachusetts Reformatory** where the younger male offenders, ranging in age from seventeen to twenty-five years, are classified and serve sentences, which are indeterminate as to minimum and limited as to maximum according to the gravity of the offence. The industries consist of a cotton and woolen textile mill and a furniture factory. Trade schools are maintained in woodworking, tinsmithing, plumbing, electric wiring and printing. Compulsory school attendance up to the eighth grade is the rule. Military drill is a feature of this institution. There is a farm of 300 acres.

3. **The Reformatory for Women** which takes all normal, reformable women in the state and attempts to rehabilitate them physically, industrially and morally. Training is largely in the household arts and sciences. It includes a shirt factory, a stocking factory and a flag industry. A farm of 250 acres and a herd of Holstein cattle provide a certain amount of outdoor work for the stronger women. A canning industry has been established recently by means of which the products of the farm can be preserved for future use. Primary school subjects are taught and opportunities for university extension courses are offered.

4. **State Farm.**—This institution is for the care and custody of misdemeanant offenders. A 1,500-acre farm gives employment in the open air.

5. The Prison Camp and Hospital is located in the hills of central Massachusetts and comprises a modern hospital for all convicts suffering from tuberculosis, whether state or county charges. Near by and managed in connection with the hospital is a camp for about sixty convicts, who maintain a stock farm and truck garden, the produce of which is sold to other institutions. There is a branch camp near Lowell, which offers further opportunity for the short-term honor man to work in the open. These camps are filled by transfer from the county jails and the state prison.

6. Department for the Criminal Insane.—In a separate hospital are housed all prisoners who become insane either before or after conviction. Commitment is made by the recommendation of a state alienist and the prison doctor, and with the approval of a judge of the superior court. A small, enclosed farm provides employment for some of this very difficult class.

7. Department for Defective Delinquents.—No provision was made for the segregation and treatment of this class until 1922. At the present time a separate institution is maintained for 160 boys, ranging in age from seventeen to twenty-five years. This class comprises those who would otherwise be sent to prison, and who have been determined by the examining alienists to be of markedly defective mentality, and a troublesome group of inmates of the schools for the feeble minded, who have manifested criminal proclivities. These boys are governed on a military basis with a variety of occupations. They have separate rooms and there is practically none of the prison aspect in their surroundings and treatment. They are, however, held under an indefinite commitment and must convince the doctor in charge of the medical work at the institution of their fitness to return to society before they can be released.

8. Department for Female Defective Delinquents.—A similar institution for the care of women delinquents who show marked mental defects. Massachusetts is a pioneer in the establishment of separate treatment for defective delinquents. The department for men numbered 176 inmates in 1926, and the department for women was opened in September of that year with rooms for 100 inmates.

9. Department for Drug Addicts.—Provision for this group was vested in the department of correction in 1922. A separate ward at the state farm cares for a limited number of drug addicts and dipsomaniacs committed by the civil side of the courts.[1]

Massachusetts has had a long history in the development of its state penal institutions. These institutions represent a gradual growth as the population and needs of the state have increased. Social welfare has had more than fifty years of experience in dealing with social problems and conditions. Traditions of public service and of the need of continuity in official life have given the state better trained personnel. What New Jersey undertook to do by the mechanical devices of an expert commissioner and a central board, Massachusetts has gradually achieved. The specialization of institutions for the treatment of different types of offenders has been worked out by the use of expert knowledge as that kind of expert information has been accumulated. Hence, we have a number of different institutions, each dealing with a fairly distinct type instead of a state prison in which all kinds of delinquents are placed without facilities for proper segregation and treatment. The spirit back of this development is expressed by the Commissioner of Correction, Sanford Bates, in his report for the year 1926 as follows:

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[1] Adapted from Bates, The Massachusetts' Department of Correction, reprinted from the *American Review*, December, 1926, published at Bloomington, Ill.; *Annual Report of the Commissioner of Correction of Massachusetts* for the year ending Nov. 30, 1926.

> The Department of Correction, without neglecting the primary duties imposed by law, has come to the conclusion that the society of the future is to be more effectively protected from the ravages of crime only as the causes of crime are better understood and intelligent and effective methods of crime prevention proposed. In any plan for crime prevention punishment will play an important part, but mental diagnosis, the elimination of physical handicaps, an intelligent scheme of education along civic lines, proper leisure time activities, encouragement of law obedience and the restoration of a civic and social morale in our growing generations are fundamentals.

SOUTHERN PENAL SYSTEMS

The prison systems and conditions in the southern states are different because of the climate and the existence of the race problem. As a result three systems developed there: the convict lease, public road and prison farm systems. The first two have been largely abandoned because of abuses appearing in connection with their use. The prison farm has attained its greatest development in the South where climatic conditions make farming the year round a possibility. In recent years, there has been a tendency to develop prison farms all over the United States. In the North, however, farming cannot assume the importance that it has in the southern prisons.

In 1917 Dr. George W. Kirchwey visited the prison camps in the state of Georgia and the following account was printed:

> In Georgia there are no prisons in the ordinary sense of that term, except for a comparatively small number of men and women who, either because of disabilities or for social reasons, are not put to work on the roads. Every county takes care of its own prisoners. They are not kept in a prison, but are distributed, in gangs varying perhaps from 20 to 150 each, throughout the county in road camps.

These camps consist of one or more shacks of rude construction, but comfortable enough in the summer although they must be most uncomfortable in the winter. The convicts are all employed on road work. Formerly in Georgia, as is still the case in some of the other Southern states, convicts were leased out to private contractors. This resulted in an abominable system of peonage and was abolished by the Georgia Legislature a few years ago.

The convicts are now worked by the county warden for the benefit of the county and thus of the State at large. The roads built by them are of most excellent quality, and it is estimated that the convicts, most of whom, it must be remembered, are negroes, are a distinct asset to the State. A warden of one of the most populous counties in the State told me that convicts in his charge were worth at least $2.50 a week each to the county. This looks like good business, but it has its dark side.

In some counties it is alleged that when more men are needed for road work the gangs are rapidly filled up through the cooperation of the prosecuting attorneys and the courts. And it is further asserted that it is almost hopeless for a man entitled to parole to receive his discharge during the busy season of road making.[1]

What may happen under these southern camp and leasing systems is shown by a case that occurred in Florida:

At intervals within the last three years there have come from Florida, Alabama, and North Carolina stories of the cruel and inhuman treatment of convicts that bring back visions of the thumbscrews and racks of the Spanish Inquisition. There is the case of Martin Tabert, for example, a twenty-two-year-old farmer boy from North Dakota who wanted to "see the world." Arrested as a vagrant in Florida and sentenced to pay a fine of $25 or become a convict for ninety days, he wired home for the money. It was sent to him by special delivery letter, but the Sheriff returned it, marked "Unclaimed." The Sheriff was getting $20 for each ninety-day prisoner turned over to a certain lumber company.

Tabert was farmed out to work for this lumber company, was flogged frequently with a heavy whip, and died in a delirium after an especially severe beating.

When the suspicious circumstances surrounding his death were called to the notice of the North Dakota Legislature, a resolution was passed calling upon the State of Florida to investigate. Despite the fact that there was some resentment against this "interference" with the affairs of one State by another, the Florida Legislature ordered an inquiry. This investigation, which established the fact that Tabert was beaten to death, resulted in such a wave of protest against Florida's county convict system that legislation was enacted prohibiting the leasing of all classes of convicts.

It was established that the Sheriff who had returned the money to Tabert's parents had an agreement with the lumber company to furnish it with free labor. The Sheriff was dismissed. The county judge who sentenced young Tabert was likewise dismissed, and the prison physician who was responsible for the care of prisoners in the lumber camp where Tabert died was denounced before the entire state as a "disgrace to the profession." The convict boss, who wielded the lash, was found guilty of second-degree murder in connection with the youth's death, and received a sentence of twenty years' imprisonment. Furthermore, a particularly brutal form of modern salvery was abolished; and with it the practice of whipping county convicts. Thus, passed a regime that rivaled in hellishness the Siberian prison regime under the Czar of Russia or the horrors of the African slave trade. Martin Tabert, therefore, did not die in vain.

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[1] *The Christian Science Monitor*, July 17, 1917.

In fairness to the citizens of Florida, however, it should be stated that they believed the convict-leasing system to have been abolished several years before. And such traffic in human beings on the part of the state actually had been abolished by statute. But counties were still permitted to lease short-term prisoners to corporations or individuals.[1]

At the present time the prisons of the thirteen southern states may be divided into three groups: (1) the institutions of Virginia, Kentucky, Tennessee, Oklahoma and Alabama, which are in general comparable to the penal institutions of the rest of the country; (2) the great prison farms of Texas, Louisiana, Mississippi and Arkansas; Florida and North Carolina have large farms as well as a central prison and road camps; (3) in Georgia and South Carolina the majority of prisoners are in the custody of the counties.

The institutions in the first group are of the same general character as are to be found in the states in other parts of the country. The farm prisons are natural developments resulting from the lack of manufacturing in the states, and the fact that the climate is such that men can be employed throughout the year.

In Georgia most of the convicts are turned over to the counties. The heads of the county units are appointed wardens by the state. These officials are paid by the county. Some of the counties provide fairly satisfactory living conditions, but in others they are thoroughly bad. State inspection of the county units is entirely inadequate. There is no state in the country in which the prison system has so many grave defects as in Georgia.

In South Carolina there is a state prison, but most able-bodied men are sent to the county units. The situation is probably not as serious as in Georgia, but in both states the penal system is involved in the larger question of county *versus* state control.

Disciplinary methods in all of the southern states present many contradictions. There is a lack of standardization of ideas and of information as to the construction and management of penal institutions. Much of this attitude is due to the late development of state-wide institutional treatment of offenders.

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[1] McConnell, Barbarism to Convicts in *The Nation*, vol. CXXIII, pp. 479–480, Nov. 10, 1926.

One of the recent changes in the situation has been in connection with the proportion of white and Negro population. Only a few years ago prisoners were predominately Negro, but this is no longer true and, if the tendency continues, the white population in prison will soon exceed the Negro in several states.[1]

Review Questions

1. Why was there little need for anything like the modern prison in America before the end of the eighteenth century?
2. Compare conditions in the Quaker colonies with those in the other colonies.
3. What was the influence of the Quakers in prison reform?
4. How was the French Revolution related to prison reform?
5. What was Howard's relation to it?
6. What was the importance of Philadelphia?
7. Describe the formation of the Philadelphia Society with the long name.
8. Describe the development of the Pennsylvania system.
9. What was the relation of the Auburn system to the Pennsylvania system?
10. Describe the struggle between the two systems.
11. What were the model institutions for the two prison systems?
12. Describe the two institutions.
13. What were some of the other early state prisons?
14. Describe the state penal systems.
15. Why has the federal prison system been relatively unimportant until recently?
16. Describe the federal prison system at the present time.
17. What recommendations were made by a special committee of the House of Representatives in 1929?
18. Describe prison conditions at the present time.
19. What prison has the best plant and the best organized industrial system?
20. What is the most constructive idea in prison disciplines introduced during the last twenty years?
21. Why do our prisons fail?
22. What are the chief characteristics of the New Jersey Plan?
23. Describe the Massachusetts Department of Correction.
24. Compare the southern penal systems with those in other states.

Topics for Investigation

1. Study the criminal codes and penal institutions of colonial times. See Barnes, "The Repression of Crime," Chap. II.
2. Describe the historical origin of the prison system in America. See Barnes, "The Repression of Crime," Chap. III.
3. Study the evolution of penology in Pennsylvania. See Barnes, "The Repression of Crime," Chaps. IV, VI and "The Evolution of Penology in Pennsylvania."
4. Study the development of American prisons. See Lewis, "The Development of American Prisons, and Prison Customs."

[1] "Handbook of American Prisons and Reformatories, 1929," pp. xxii–xxvii, pubished by the National Society of Penal Information. A representative of the society has spent about eight months studying the road camps. A brief summary of these reports is given in the handbook. The full report will be published in separate form during 1930.

5. Describe the old Newgate Prison in Connecticut. See Sutherland, "Criminology," p. 393 and *The Outlook*, pp. 64–66, May 10, 1916, and p. 562, July 5, 1916.

6. Describe the Eastern Penitentiary (Pennsylvania). See Dickens, "American Notes," Chap. VII and the *North American Review*, July, 1839.

7. Describe Sing Sing Prison. See Lawes, "Life and Death in Sing Sing."

8. Study the life of a person in prison. See Lowrie, "My Life in Prison"; Jennings, "Thru the Shadows with O. Henry"; and Clark and Eubank, "Lockstep and Corridor."

9. Discuss the selection of prison officials and guards. Cass in the *Journal of Criminal Law and Criminology*, pp. 598–602, February, 1921.

10. Describe the Illinois Department of Public Welfare. See the *Journal of Criminal Law and Criminology* pp. 468–470, September, 1917.

11. Describe the Massachusetts Department of Correction. See the reports of the commissioner.

12. Study the *Report of the New Jersey Inquiry Commission.* See Kirchwey in the *Journal of Criminal Law and Criminology*, August and November, 1918.

13. Study the *Report of the Prison Survey Committee of New York.* See *The Survey*, pp. 157–159, Oct. 30, 1920.

14. Describe the prison system in the Philippine Islands. See *Proceedings of the American Prison Association*, pp. 55–65, 1924.

15. Make a study of a number of important state prisons at the present time. See "Handbook of American Prisons and Reformatories," published by the National Society of Penal Information.

Selected References

1. SUTHERLAND: "Criminology," Chaps. XVII–XVIII, XX.
2. GILLIN: "Criminology and Penology," pp. 387–407, 413–423, 474–515, 523–526, 530–545.
3. ROBINSON: "Penology in the United States," Chap. V.
4. WINES: "Punishment and Reformation," Chap. VIII.
5. OSBORNE: "Society and Prisons," Chap. III.
6. BARNES: "The Repression of Crime," Chaps. II–IV, VI, VIII.
7. TANNENBAUM: "Wall Shadows," Chaps. I, III.
8. TANNENBAUM: "Darker Phases of the South," Chap. III.
9. BROCKWAY: "Fifty Years of Prison Service," Part I.
10. STUTSMAN: "Curing the Criminal," Chaps. I–VI.
11. "Handbook of American Prisons, 1926" and "Handbook of American Prisons and Reformatories, 1929."
12. *Prisoners*, 1923, Bureau of the Census.
13. LEWIS: "The Development of American Prisons and Prison Customs, 1776–1845."
14. BACON: "Prison Reform."
15. O'HARE: "In Prison."
16. LOWRIE: "My Life in Prison."
17. CLARK and EUBANK: "Lockstep and Corridor."
18. BARNES: "A History of the Penal, Reformatory and Correctional Institutions of New Jersey."
19. BARNES: "The Evolution of Penology in Pennsylvania."
20. LAWES: "Life and Death in Sing Sing."

CHAPTER XI

REFORMATORIES

In addition to the Pennsylvania and Auburn systems there has grown up in the United States a third system of penal discipline known as the "reformatory system." State reformatories deal with selected adults, who are differentiated from other prisoners partly by the crimes which they have committed and partly by personal characteristics, such as age, rendering them more amenable to reform. Many of the states have both state reformatories and state prisons or penitentiaries.

The adult reformatory movement can not be traced to the institutions for dealing with juvenile delinquents which long preceded it. For its beginnings we must look to Australia, where, in 1840, Captain Alexander Maconochie was placed in charge of the English penal colony on Norfolk Island. He introduced what is called the "mark system." Each convict, according to the seriousness of his offense, had a certain number of marks set against him, which he had to redeem before he was liberated. These marks were to be earned by deportment, labor and study, and the more rapidly they were acquired the more speedy the release.

Captain Alexander Maconochie

This plan of managing prisoners had been brought by him to the notice of a committee of the House of Commons in 1837. After his retirement from Norfolk Island, he was for a time governor of the Birmingham Jail in England, where he put the same system into operation, but the legal difficulties proved insuperable and he was regarded officially as a failure. As Wines declared: "He seems to be one of England's unappreciated and partially forgotten worthies."

Maconochie believed that convicts could be gained to a man by a system which would study their natural feelings and seek their own improvement, together with that of their country, in their treatment.

Again, he declared that he feared neither bad habits nor any other difficulties. He thought that while life and sanity were spared, recovery was always possible, if properly sought. "There is," he said, "indefinite elasticity in the human mind, if its faculties are placed in healthful action and not either diseased by maltreatment or locked up in the torpor of a living grave." Undoubtedly he had in mind, in the last reference, the influence of solitary confinement so much relied upon by the reformers of his time. Wines described him in a report prepared for the legislature of New York in 1867 as "that extraordinary man who was a full century in advance of his contemporaries in his philosophy of public punishment."

Maconochie was born in 1787, entered the Royal Navy in 1803, served in the West Indies, and while there was taken prisoner by the Dutch in 1811. He was made commander in 1815 and retired as a captain in 1855. He was in Van Dieman's Land in 1837, governor of Norfolk Island 1840 to 1844, and secretary to the lieutenant governor of Van Dieman's Land in 1849. He was governor of Birmingham Jail from 1849 to 1851. He died in 1860.

Wines, in a report prepared for the International Congress on the Prevention and Repression of Crime in 1872, pointed out that Maconochie "produced no good book, not did he develop in any single publication, his whole system of prison organization and prison management. He was preeminently a pamphleteer; and his works, which are numerous, consist rather of tractates, dashed off on special occasions and for particular purposes, than complete and exhaustive treatises, evolved through a process of long and patient thought, continued through months and years of solitary study. For this reason he continually repeats himself; and it is not even uncommon with him to give the same name to different publications."

His writings cover the period from 1839 to 1857, and include such titles as Thoughts on Convict Management, the Mark System, Norfolk Island, Reformatory Prison Discipline, and Principles of Punishment on which the Mark System is Advocated. The character of these pamphlets makes them inaccessible to the persons who are most interested in their contents. Dr. Wines, consequently brought his principles of prison discipline together in a series of propositions, of which the following are the most important:

Maconochie's fundamental principle was the substitution for the customary time sentences of a specific task to be computed in marks of approval, given for diligence and good conduct. The prisoner's destiny should be placed measureably in his own hands; he must be put into circumstances where he will be able, through his own efforts, to better his condition. Severe suffering by way of example and warning has not been very effective in preventing the recurrence of crime. Submission and self-command through a period of probation as the essential condition of release would be practically more deterrent than severity.

The principle of mutual responsibility or of grouping prisoners together in small companies, made to resemble as closely as possible ordinary family life, will be found highly conducive to their reformation. The prisoner's self-respect should be cultivated to the utmost. Moral forces should be relied upon with as little resort to physical force as may be. The military type of discipline is not suited to the nature and design of public punishment.

Unsuitable indulgence in prison management is as pernicious as unsuitable severity. The true principle is to place the prisoner in a position of stern adversity from which he must work his way out by his own exertions, by diligent labor and a constant course of voluntary self-command and self-denial.

The education of prisoners is a matter of primary importance as a means of reforming them. Religious instruction and culture are all important for purposes of reformation.

Industrial labor is the only occupation that has an amendatory power; the treadmill, crank and shot drill are deteriorating rather than reformatory in their effect.

In a reformatory system, the employment of prisoners as subofficers and even as jurors in trying their fellow prisoners is attended with good effects. Undue restraint on correspondence and too minute and rigid a surveillance are both of evil tendency and effect in prison management. Individualization is an essential principle of reformatory prison discipline. The natural complement of such a system is a provision for discharged prisoners which will hold them to their honest intents and prevent their falling back into crime.

In concluding his summary of Maconochie's principles, Wines emphasized the fact that "he was not a mere theorist. He was, as well, a man of action, who applied the principles which he developed with reformatory results." In comparing Howard and Maconochie, he said: "To John Howard belongs the higher honor of having awakened mankind to thought upon this vital question; to Alexander Maconochie will yet be assigned the highest honor of having guided that thought to enlightened, wise and fruitful action. In Maconochie head and heart, judgment and sympathy, the intellect and the emotional element were developed in harmonious proportions and were equally vigorous and active.[1]

Sir Walter Crofton

Sir Walter Crofton, who was made a baronet for his services in the Irish prisons in 1862, was born in West Flanders in 1815. His father, a captain in the army, was killed at the battle of Waterloo, when his son was about four months old. The son entered the army, becoming a second lieutenant in 1833, captain in 1845, was placed on half pay the same year and retired in 1881.

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[1] Wines, Alexander Maconochie and His Principles of Prison Discipline in the *Proceedings of the International Prison Congress*, 1872, pp. 163–204. Printed in Senate Executive Documents, 39, 2d Session, 42d Congress, 1871–1872.

Maconochie published the following pamphlets: Thoughts on Convict Management and Other Subjects Connected with Australian Penal Colonies, 1839; Comparison between Mr. Bentham's Views on Punishment and Those Advocated in Connection with the Mark System, 1847; Norfolk Island, 1848; The Principles of Punishment on Which the Mark System of Prison Discipline is Advocated, Addressed to the Committee of the House of Commons Now Investigating the Subject, 1850; On Reformatory Prison Discipline, 1851; The Mark System of Prison Discipline, 1855; Prison Discipline, 1856; The Mark System of Prison Discipline, 1857.

Besides his work in Ireland from 1854 to 1862, he was commissioner of county and borough prisons in England from 1865 to 1868 and chairman of the prisons board in 1877 to 1878. He died in 1897.

He was author of "A Few Remarks on the Convict Question" in 1857 and "A Brief Description of the Irish Convict System" in 1862.

Crofton, who was the director of Irish convict prisons from 1854 to 1862, borrowed the mark system from Maconochie and added a fourth stage to the three already recognized in England. These were solitary confinement, labor in association and release on a ticket of leave. Crofton would not grant the ticket of leave until after a test had been applied, in a condition of comparative freedom, at a so-called "intermediate prison" where the inmates slept in movable iron huts and were occupied in farming and manufacturing, almost as freemen would have been.

The intermediate prison had neither bars, bolts nor walls. Its aim was to make practical proof of the prisoner's reformation, his power of self-control, his ability to resist temptation, and to train him for a considerable period—never less than six months—under natural conditions, and so prepare him for full freedom by the enjoyment of partial freedom as a preliminary step.

Promotion from stage to stage was dependent upon the conduct of the prisoner. A certain number of marks were required to be earned by the convict before he could be promoted. The institution of marks provided a minute and intelligible record of the power of the prisoner to govern himself and compelled him to realize that his progress to liberty could be furthered only by the cultivation and application of qualities opposed to those which led to his conviction. "The most successful in combating self and in climbing the ladder of self-control and industry, will the soonest obtain the required number of marks and the goal to which they lead—the intermediate prison, and thence the liberty for which he is supposed to have been made fit, by the lessons of those good schoolmasters, industry, self-control and self-reliance, succeeded by a very special and natural training."

Crofton's great contribution to prison discipline was his intermediate prison at Lusk, fifteen miles from Dublin. An open common in the village, previously occupied only by squatters, was enclosed by Act of Parliament. Two huts of corrugated iron, each capable of holding fifty men, were erected. A portion of each hut was partitioned off for a warder to sleep in, and the rest served as day room and dormitory for the convicts. A cookhouse and offices of the simplest kind stood with the huts in an enclosure bounded by a mud wall a yard high. A few cottages for warders, scattered about the common, completed "the prison" as it was in 1861. At that time there were about sixty convicts in charge of five warders. Of more than a thousand men, who had passed through the institution, only two attempted to escape.

Individualization was the ruling principle of the intermediate prison and the number was not allowed to exceed one hundred. No more restraint was exercised over the prisoners than would be necessary to maintain order in any well-regulated establishment. They were employed in the reclamation of the land. The officers worked with the convicts and they were unarmed. Physical control was therefore impossible, and, if possible, would have been out of place and inconsistent with the principles upon which the establishment was based.

Crofton maintained that (1) you have to show the convict that you really trust him and give him credit for "the amendment he has illustrated by his works"; (2) you have to show the public that the convict, who will soon be restored to liberty, may upon reasonable grounds be considered as capable of being safely employed.

Crofton's system, or the Irish system as it came to be known, also provided for supervision of the convicts on ticket of leave. The first requirement for release or parole was the finding of work. A well-organized system of registration was arranged by which the local police could supervise the men and report the infringement of the rules. The success of the system in the early years was due to the unusual work of one of the officials at Lusk. In Dublin he visited every man fortnightly and filed a report. About 140 men were under supervision at one time.[1]

OTHER EUROPEAN CONTRIBUTIONS

Besides the pioneer work of Maconochie and Crofton, a number of other contributions were made to the developing reformatory system. In 1828 and in 1836 Charles Lucas, a French penologist, published "The Penitentiary Systems of Europe and America" and "The Theory of Imprisonment," in which he took the position that a *curative reformatory* type of prison discipline ought to be substituted for the *contemporary repressive* system. He seems to have had in mind an institution similar to the Elmira Reformatory.

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[1] CARPENTER, "The Crofton Prison System," London, 1872. Reformatory principles of prison discipline were developed by Obermaier in Bavaria, Montesinos in Spain and Maconochie in Australia from 1830 to 1850. For the first time all these principles were embodied in a single system in the Irish prisons by Crofton. Miss Carpenter compiled a complete account that was published in a volume with the title "Our Convicts," which is now out of print. Miss Carpenter prepared a new account for the International Prison Congress.

At about the same time that Maconochie was working out his mark system, the idea of an indeterminate sentence was originated and supported by the writings of Archbishop Whately of Dublin, the Scotchman, George Combe, and, particularly, the English reformers, Frederick and Matthew Davenport Hill. The parole system was most effectively advocated by the French publicist, Bonneville de Marsangy. The notion of productive and instructive prison labor was also developed during the second quarter of the nineteenth century by Montesinos in Spain and Obermaier in Bavaria.

All these innovations attracted the attention of the leading American reformers, Theodore W. Dwight and E. C. Wines of the New York Prison Association, F. B. Sanborn of Massachusetts, Z. R. Brockway of Detroit and Gaylord Hubbell, Warden of Sing Sing Prison. Mr. Sanborn in 1865 presented, for the first time officially in America, the principles advocated by European reformers in a report made to the legislature in Massachusetts. The New York Prison Association became the nucleus for an agitation which declared reformation to be the primary object of penal institutions. As the result, a national prison association was organized at Cincinnati in October, 1870, and a declaration of principles adopted which stated that *time sentences* were wrong in principle and recommended the substitution of *reformation sentences*.[1]

This important document declared that "the treatment of criminals by society is for the protection of society. But since treatment is directed to the criminal rather than to the crime, its great object should be his moral regeneration. Hence the supreme aim of prison discipline is the reformation of criminals, not the infliction of vindictive suffering." The declaration also urged a progressive classification of criminals based on character and on some well-adjusted mark system. It pointed out that "rewards, more than punishments, are essential to every good prison system." The prisoner's fate should be placed to a considerable extent in his own hands. Reformatory agencies were also discussed in the declaration of principles, which was the work of a committee composed of Dr. E. C. Wines, Frank Sanborn and Z. R. Brockway.[2]

PRISON REFORM AFTER 1870

Dr. E. C. Wines (1806–1879) was educated for the ministry, but spent most of his life down to 1860 in educational work. In 1862 he was made secretary of the Prison Association of New York and remained in that position until 1871. He secured appropriations from city and state authorities, and at the time of his resignation the yearly income of the society was $14,000.

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[1] BARNES, "The Repression of Crime," pp. 166–168, Geo. H. Doran Company, 1926; WINES, "Punishment and Reformation" (new edition revised by W. D. Lane), pp. 200–202, Thomas Y. Crowell Company, 1919.

[2] GILLIN, "Criminology and Penology," pp. 622–623, The Century Company, 1926; the declaration is to be found in Henderson, "Prison Reform and the Criminal Law," pp. 39–63, Russell Sage Foundation, 1910.

As a result of a study of the prisons of New York made by Dr. Wines, the association authorized the president, Theodore W. Dwight, and Dr. Wines to make a tour of the United States for the purpose of investigating prison conditions. They visited eighteen states, including all the New England and middle states, and in addition West Virginia, Kentucky, Missouri, Illinois, Michigan, Wisconsin, Indiana and Ohio. Their report was printed by the New York legislature in 1867.

In this "remarkable and epoch-making report," they declared that "reformation is the primary object to be aimed at in the administration of penal justice," and that, tried by such a test, "there is not a prison system in the United States which would not be found wanting." They expressed the opinion that "the whole question of prison sentences requires careful revision. Not a few of the best minds in Europe and America have reached the conclusion that time sentences are wrong in principle, that they should be abandoned, and that reformation sentences should be substituted in their place."

Wines was the moving spirit in the organization of a national prison association in 1870, which has continued to the present time. He was made secretary of this organization in 1871, and in the same year he was appointed a special commissioner of the United States "to secure the adhesion of the chief European governments to his project of holding an international congress in London." He succeeded, and the first International Prison Congress met in London in 1872. Regular meetings have been held from time to time since the first congress.

In 1863 F. B. Sanborn (1831–1917) was made the first secretary of the Board of State Charities of Massachusetts, the first board of that kind in the United States. Among the duties of the secretary was the inspection and supervision of "some thirty prisons, large and small, managed under an antique and heterogeneous system of laws and customs." During 1864 he visited all these prisons, and some in other states, and "investigated what was then a new system, the Irish convict law and practice. Upon this, and the defects of our own prisons, he reported in February, 1865, to the Massachusetts legislature." The results were also presented in the *North American Review* in January, 1866. The report and article fell into the hands of Wines and Dwight, and Sanborn was able "officially to promote their inquiry in Massachusetts." Thus he was brought into the agitation that finally resulted in the development of the reformatory system.[1]

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[1] Henderson, "Prison Reform and Criminal Law," pp. 3–38, 64–87, Russell Sage Foundation, 1910.

THE ESTABLISHMENT OF ELMIRA REFORMATORY

In 1863 one of the state prison inspectors of New York urged the establishment of a new prison. The Prison Association approved the suggestion and memorialized the legislature to take the necessary action, giving two reasons for its acceptance: (1) that it would be intermediate between the state prisons and the county jails, and, therefore, adapted for the reception of offenders not charged with the major felonies; and (2) that it would give an opportunity to establish a prison "with all the modern appliances for the health, the discipline, the labor, the instruction, and the reformation of its inmates; in short, an institution which shall be a model of its kind." In 1868 the association renewed its appeal, and gave as an additional reason that it "would afford an opportunity to test, on a small scale and under favorable circumstances, what is now generally known as the Irish system of prison discipline." The legislature directed the governor to name a commission to select the site and prepare a plan for "the proposed industrial reformatory."

The commission reported in 1870 that they had selected a site in Elmira, and recommended the erection of buildings to accommodate five hundred prisoners, "one in each cell, to be so constructed as to admit of the necessary classification of inmates." The contract labor system was to be forbidden by law. No prisoners were to be received under the age of sixteen or over that of thirty. Discipline was to consist chiefly in the bestowal and withdrawal of privileges. A new and distinguishing feature was the principle of the indeterminate sentence, referred to in the report as "substantially reformation sentences."

In 1870 the governor appointed a building commission, and in 1876 the buildings were ready for occupancy. Z. R. Brockway was made superintendent and remained in office until 1900.

Elmira was the pioneer institution of its kind and became the pattern for similar institutions in other states. It was a combination of the Australian mark system, conditional liberation and the indeterminate sentence. Reformation was to be accomplished by education, employment and regularity of conduct.

A complex but symmetrically working mechanism of daily schooling, occupation, sanitation, military drill and moral and mental training was instituted. The prisoner was placed in a succession of movements which not only carried him along willingly or unwillingly, but which sooner or later—and generally quite early in the process—converted his will to the promotion of his own improvement. The way was not so much made easy for him as it was made desirable. Consequently, the public sentiment of the convicts was enlisted on the side of reformation. The inmates were taught a considerable number of practical trades, which enabled them to become useful members of society upon their release.

The marking system was a monetary one. A certain amount was allowed each prisoner for his day's work, varying with his grade and standing. Each one was charged for board, clothing and medical attendance. He was fined for misconduct and failures in school and trade work. His grade and release upon parole depended upon his marks.

When admitted the prisoner was placed in the second grade. Six perfect months in conduct and in examinations in school and trade work were required for promotion to first grade. A prisoner reduced to third grade must make thirty days perfect for restoration to second grade. An inmate in first grade could be paroled after six perfect months and passing examinations. He must have obtained satisfactory employment. When paroled he must report once a month. After six months, if conditions were satisfactory, he could be discharged. Violation of parole meant return to serve out the term of the original sentence.

The Elmira system, therefore, was a composite of the ideas of Maconochie, Crofton and other reformers. The Irish system was its immediate predecessor. The details were worked out experimentally by Brockway "than whom no better choice could have been made." He came to the reformatory with twenty-five years' experience in prison service. At the age of twenty-three he had entered upon this kind of work at the Connecticut State Prison, going later to New York, where, in 1854, he became superintendent of Monroe County Penitentiary. In 1861 he took charge of the House of Correction in Detroit, Michigan, from which he came to Elmira.

Brockway was one of the greatest adminstrators of reformatory institutions in the country, a student of Amos Pilsbury at the Connecticut prison. The Pilsburys—Moses and Amos—had the combination of qualities to govern without severe measures and to produce good results. They were among the few wardens whose names stand out above the others in the history of American prisons. Most of the wardens have been selected for other considerations. Brockway's "Fifty Years of Prison Service," published in 1912, a dozen years after his retirement from Elmira, is the record of a period of professional service unique in its length and its achievement. His work was a milestone in the socialization of imprisonment.

F. B. Sanborn, in an account of the relation of E. C. Wines to prison reform in the United States, refers as follows to Brockway and his services in the establishment of the reformatory system:

> Massachusetts had anticipated New York in laying before the people of America the then recent theories of Captain Maconochie, which, reduced to practice, had demonstrated their soundness under the system of Captain Walter Crofton, and had been introduced with full authority in Ireland in 1854. But New York had anticipated both Massachusetts and Ireland in furnishing a youth of genius, fortified with common sense and business tact, who was building prisons

and showing how they ought to be administered, while Dr. Wines and I (Sanborn) were talking about the principles involved. This powerful ally was Z. R. Brockway, originally of Connecticut, but who in his early manhood migrated to New York. There under a New Hampshire prison disciplinarian, Amos Pilsbury, he was learning at Albany the lessons upon which he so much improved afterward at Rochester, Detroit and Elmira. We made his personal acquaintance at Detroit in 1866–67, and from that time forward he became a most efficient member of the volunteers of Prison Reform.[1]

Mr. Brockway was a member of the committee of three which drew up the declaration of principles adopted by the Prison Congress at Cincinnati in 1870. He also contributed a paper on the The Ideal Prison System in which he presented "the essential reasons for the indeterminate sentence as clearly as they have ever been stated" (Sutherland, p. 511). Whether he would have had the opportunity to prove the truth of his theories but for the preparatory work in New York of Dr. Wines and his colleagues must remain a matter of speculative opinion. They conciliated public opinion in advance, formulated the plans for the Elmira institution, secured its establishment and freed it largely from political influences, leaving Brockway a free hand in its development. On the other hand, he had the practical experience in penal administration that enabled him to carry into effect the ideas of Wines and his associates. Brockway had been doing, in an experimental way, at Detroit before he came to Elmira what had been done on a large scale by Sir Walter Crofton in Ireland.[2]

Growth of the Reformatory System

Other states followed the example of New York in the establishment of institutions based upon the Elmira plan. At the present time there are thirty-three reformatories for adults; nineteen are for men and fourteen for women.

Most of the reformatories for men were established before 1910. In time many of the features of the new system were introduced into the regular prisons and the distinction between them and the reformatories became somewhat vague. The age limit is not of material importance, since a large percentage of those admitted to state prisons are under thirty years of age. The general use of the parole system, both in prisons and reformatories, has tended to reduce further the differences between the two institutions. The passing of the adult reformatory, consequently, is due to the adoption of many of the reforms introduced by the Elmira system.

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[1] Henderson, "Prison Reform and Criminal Law," p. 77 Russell Sage Foundation, 1910.

[2] Brockway, "Fifty Years of Prison Service," New York, 1912. Detailed descriptions of the Elmira system may be found in Wines, "Punishment and Reformation" (new edition revised by W. D. Lane) Chap. X, Thomas Y. Crowell Company, 1919; Robinson, "Penology in the United States," Chap. VII, The John C. Winston Co., 1921; Henderson, "Penal and Reformatory Institutions," Chap. V, Russell Sage Foundation, 1910; Gillin, "Criminology and Penology," Chap. XXVII, The Century Company, 1926.

Reformatories for women have developed rapidly since 1910. Separate prisons for women were established in several states, but the reluctance to commit women to penal institutions made the demand for such places less urgent. In most states women were taken care of in branches of the prisons for men. Recently, there has been a tendency to remove the age limit and send all adult women to the reformatories. Misdemeanants as well as more serious offenders, therefore, are sent to the reformatories for women. This recent development has resulted in the establishment of a number of new reformatories which receive all women above the training school age. It indicates the adoption of reformatory treatment for adult women, just as the use of similar methods by the prisons for men marks its introduction for adult men.

STATE REFORMATORIES FOR MEN

Each year the courts commit to the state reformatories about six thousand offenders whose average age is approximately twenty-one years. Their total average population is more than nine thousand. They employ about one thousand men as officers and their gross cost is in excess of $3,000,000 per year.

These institutions are intended for first-time offenders, but in actual practice they receive many individuals who are confirmed criminals. Their establishment is based upon the theory that all offenders may be reformed. That theory has been rendered untenable by the results of the investigations of psychology and psychiatry, which have shown that many criminals have mental defects that cannot be cured by the methods used by reformatories. The reformatories depend chiefly upon educational means. The popular belief that lack of education and industrial training are causes of crime has been an important influence in the development of reformatories. State laws providing for reformatories all require that the inmates be given mental, physical, industrial and moral training. Many delinquents cannot be reformed or trained by any known methods. Consequently, reformatories fail in so far as they employ their efforts on human material that is unsuitable because of mental defect or habitual criminality.

There is need of segregation on a scientific basis. The mass of offenders ought to be distributed among at least three types of institutions. The confirmed, habitual criminals do not belong in a reformatory; their proper place is in a prison where they may support themselves by their labor. The defective and feeble-minded delinquents require permanent custodial institutions where they may be kept comparatively useful and happy in suitable industrial occupations. Only by the careful elimination of these two classes can reformatories be relieved of the unreformable and be given a real chance to demonstrate their possibilities.

The reformatory stands between the state prison and the juvenile reform school. It is based upon the theory that there is intermediate between the "juvenile delinquent," and "the mature, hardened offenders," a class of delinquents from sixteen to thirty years, "first offenders, untaught in criminal ways, and very susceptible to reformation." This theory was prevalent in the New England and middle states in the sixties of the last century, and was one of the fundamentals in the movement to establish the Irish system in this country. It was ignorant of the existence of many of the mental defects known at the present time.

Training in a skilled trade was regarded as essential to reformation by the advocates of the state reformatories. Twenty-nine trades were taught at Elmira. In addition to the difficulty of teaching trades to certain types of delinquents, the development of the present almost completely mechanized factory system of production has made trade training of comparatively minor importance. The reformatory system came into existence when manual productive skill held a larger place in our industrial life. This revolution in the methods of industry, added to the discoveries of psychology and psychiatry, has destroyed the foundations upon which the reformatory was based. The reformatory has, therefore, become something of an anachronism in present-day conditions. Hence its failure to maintain the hopes of its friends.

Time served is the main factor in determining when reformatory inmates may be paroled. Promotion from grade to grade must be earned by good conduct and good conduct must be maintained in each grade for a specified time. In short, the determination of reformation is based on behavior in the institution for a certain length of time.

As a general rule, reformatory subjects are held in custody for about a year. Illiterate, well-disposed young fellows may in that time be given sufficient schooling to be of a good deal of value to them, but bad habits due to lives spent in unfavorable surroundings cannot be replaced by good habits in one year of reformatory training. Training and education for a year cannot make unskilled, habitual loafers, apprentices in crime, and mental defectives socially or industrially efficient. The task is essentially one of socialization. This involves a modification of attitudes and a sublimation of interests. To produce such a change in individuals, it is necessary to put them in contact with the ideals, sentiments and traditions of ordinary society. The reformatories have not been influenced very much by the cottage system of breaking up large numbers of delinquents into comparatively small groups, as has been done in the juvenile reformatories, and they have not adopted "honor methods" of dealing with the offenders committed to their care. They have relied largely upon formal education and training, combined with a mechanical routine that is supposed, by the use of rewards, to bring about almost automatically a reformation in habits and character. Socialization does not usually result from such methods. The social process of reformation is slower and much more intangible. Its technique is as yet little understood, but we do know that the reformatory system of the middle of the nineteenth century is neither psychologically nor sociologically sound.

All reformatories have farms, and agriculture is important as an industry and as a source of food products. There is a widespread belief that, if young delinquents were trained as farmers and induced to live in the country, much criminality would be prevented. Institutional farms are regarded as the means of proving to delinquent youth the attractiveness of farming as an occupation. It is also thought that the reformatories have an opportunity to feature instruction in agriculture, thus supplementing the high schools and colleges, in providing farmers trained in scientific facts and principles regarding agriculture. As a matter of fact, the farms of most reformatories are used largely for purposes of production. As a means of agricultural training, aside from giving a certain amount of experience in farm work, the results have been small.

Reformatories need officials who realize what is involved in the reformation of delinquents, and who are trained in the best methods known for such work. At the present time, men of the ability and training necessary for the difficult task of reformation are neither demanded nor obtained for reformatory service. Dr. Adler, state criminologist of Illinois, asks this suggestive question, "Is there a single institution in this country which has provided for its wards the same grade of personnel, the same training and expertness, that we find in a good, general hospital?"[1]

A great change has taken place with respect to the kind of human material received by the reformatories. Originally they were supposed to receive young men, convicted of their first offenses, and, consequently, reformable because of their age and their lack of criminal habits. Probably these conditions held true in regard to the great majority during the early years. More recently, however, probation and court parole have been widely used in dealing with delinquents who were formerly sent to prison. The work of the reformatory, therefore, is becoming more difficult and its effectiveness has been reduced. Many reformatories now receive the remainder, on whom probation or other institutional treatment has been tried in vain. The possibilities of reformation are seriously affected by these conditions.[1]

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[1] SUTHERLAND, "Criminology," p. 421, J. B. Lippincott Company, 1924.

Professor Barnes has summed up the defects of the reformatory system as follows:

> It failed signally to provide the right sort of psychological surroundings to expedite reformation. The whole system of discipline was repressive and varied from benevolent despotism in the best instances, to tyrannical cruelty in the worst. There was little, if anything, done to introduce any sense of individual or collective responsibility for the conduct of the prison community, nor was any significant attempt made to provide any education in the elements of group conduct and the responsibilities of the citizen. There was little, if any, grasp of that fundamental fact which is basic in the newer penology, namely, that a prisoner can be fitted for a life of freedom only by some training in a social environment which bears some fair resemblance in point of liberty and responsibility to that which he must enter upon obtaining his release.
>
> Finally, there was no wide acceptance of the present position that the general body of delinquents cannot be treated as a single unified group. There was no general recognition that criminals must be dealt with as individuals or as a number of classes of individuals of different psychological and biological types that must be scientifically differentiated through a careful psychiatric study, as well as a detailed sociological study of their environment, preliminary to the major part of their treatment while incarcerated.[2]

Professor John L. Gillin after a careful study of reformatories for men has made the following evaluation:

> (1) The best of them meet a need which ordinary penal institutions have not met. The poorest are only another type of prison masquerading under a new name. (2) Where they have failed it has been due (*a*) to the attempt to apply the same methods to all classes of delinquents, (*b*) to the attempt to change habit by mass treatment, (*c*) to the maximum limit of the sentence, (*d*) to the character of the personnel, and (*e*) to the limits set by law to the parole period. (3) The experience of the reformatories has demonstrated the value of the indeterminate sentence; (4) the history of the reformatories has shown that parole, carefully administered, has value in the habilitation of the offender, who has been properly trained, and who has such qualities of mind and character that he can safely be released; (5) they have influenced the ideals and methods in many prisons; (6) they have stimulated the legal provisions for suspended sentences and probation, which saves large numbers of offenders from the stigma of an institution sentence; (7) they have shown the necessity of treating delinquents both in the institution and on parole on the basis of a thorough study of their social history and of their physical and mental characteristics; (8) they have suggested the importance of a similar diagnosis before commitment. The experience of the reformatories has also raised the question as to whether the

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[1] NALDER, The American State Reformatory in *University of California Publications in Education*, vol. V, pp. 289–467, Mar. 10, 1920.

[2] BARNES, "The Repression of Crime," pp. 168–169, Geo. H. Doran Company, 1926.

law should state what treatment should be given an offender, or whether that should not rather be determined by a board of experts in psychiatry and sociology, while the function of the law should be to define criminality, and designate the court in which he should be tried. It also suggests that possibly the function of the court is merely to determine the question as to whether a given individual has committed the crime with which he is charged. (9) The experience of the reformatory has raised the question as to whether the public schools should not do much of the educational work which the reformatories at presentare forced to do, and thus prevent many of the tragedies which the reformatories are called upon to handle.[1]

WOMEN'S REFORMATORIES

The number of women offenders has always been much smaller than the number of men. Consequently, the problem of separate institutions for women has never been so urgent. In 1923 out of a total population of 14,446 in reformatories, 12,507 were men and only 1,839 were women.

In the United States, Indiana was the first state to segregate the women delinquents from the men in penal institutions. In 1869 a movement for a separate prison for women was organized and in 1873 such an institution was opened. In the beginning it was known as the Indiana Reformatory Institution for Women and Girls. In 1889 the name was changed to the Reform School for Girls and Women's Prison. In 1899 the two divisions were separated, one being called the Industrial School for Girls, and the other the Women's Prison. Later the industrial school was moved to a separate site.

A movement was started in Massachusetts in 1871 to segregate the women in the jails from the men. The only result was that the women were put in a separate department. In 1874, after four years of agitation by a voluntary association of women, the legislature appropriated $300,000 to establish a reformatory for women to care for 500 inmates. The institution was ready to receive its first inmates in November, 1877. The first real reformatory for women was established in New York about 1900. The older institutions in Indiana and Massachusetts were really prisons for women, which later developed into reformatories.

According to Professor Gillin, a woman's reformatory must have the following characteristics: (1) it must be an institution separate from one for men; (2) it must be separate from the institution for delinquent girls up to sixteen years; (3) it must be reformatory rather than custodial; (4) it must be maintained and controlled by the state; (5) to it the courts may sentence delinquent women for offenses and under conditions stated in the law; (6) the purpose is to care for, treat, train and reform.

The present trend is away from a stigma-bearing title in the names of the institutions. Of twenty reformatories in nineteen states, nine use the word "reformatory" and eleven use other terms. Two have retained the term "prison," one describes the institution as the House of Refuge, and one as a House of Correction. Seven have eliminated entirely "prison," "correction," "refuge" and "reformatory." Four of these use the word "farm," while two call the institution an "industrial farm." Two use the term "industrial home," and one is called a "training school." Only two of the nine established since 1917 use the word "reformatory."

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[1] GILLIN "Criminology and Penology," pp. 641–643, The Century Company, 1926-

The ages within which commitments may be made vary from state to state. Massachusetts is the only state which fixes no age limit minimum or maximum. Fourteen states fix no maximum, but provide a minimum age ranging from twelve to eighteen. Evidently, the tendency is to put no obstacles, except a minimum age separating delinquent girls from mature delinquents, to the development of a single institution for all adult women. The distinction between prison and reformatory does not exist in the penal treatment of women. Obviously, such an outcome is due to the difficulty of maintaining more than one institution in any except the more populous states. It is more important to have an institution for women separate from men than to provide for the different types of treatment. The small size also facilitates the individualization of care of the inmates.

The problems involved in the treatment of delinquent women may be suggested by an analysis of the first thousand commitments to the New York State Reformatory for Women at Bedford Hills. Of these 221 were committed for misdemeanors, 264 for felonies, and 515 for all other offenses. Only 36 were committed for being habitual drunkards, and 8 for public intoxication. The thousand girls had been engaged in 52 occupations, but the occupations connected with the home constituted the majority, 561. Among the thousand there were 135 factory operatives and 30 saleswomen, and 314 had been in reform schools or other institutions; 89 could neither read nor write, while 436 had a fair knowledge of the common English branches, 24 had graduated from high school, 63 from the eighth grade and 2 had studied at normal school; 149 had been committed for grand larceny, 192 for petit larceny, 36 as common drunkards, and 163 as prostitutes.

Furthermore, the physical condition of these women must be considered. Of 138 women committed to the Massachusetts Reformatory for Women in 1920 to 1921, about 58 per cent were venereally diseased. Moreover, large numbers are mentally defective.

A reformatory for women possesses many peculiarities in its administration. The greater consideration shown to women results in the sending of women of confirmed criminal habits. In this way the work of reformation is made more difficult. On the other hand, women are more sensitive to the loss of the good opinion of others and are thus more easily influenced by reformatory agencies. The reformatory is also an inebriate asylum and rescue home combined on a large scale. The nature of the work makes the methods used entirely different from those in an institution for men. Naturally, the main occupation or trade taught is that of housekeeping or homemaking in which most of the women are so sadly lacking. The women who have no homes to go to are usually released on probation to do housework.

The Prison Survey Committee of New York State found in 1920 that in a group of 161 women on parole, 139 followed domestic occupations, 11 factory work, 4 commercial work, and 7 miscellaneous occupations. The committee believed that many of these women would return to their former industrial employments, and questioned the wisdom of the policy of training so exclusively for vocations in the country connected with the conduct of a household. It doubted the soundness of the assumption that the woman paroled to domestic service would remain in such service, even though she may have had previous industrial or commercial experience. In view of the fact that a majority of the first thousand admitted to Bedford had been engaged in occupations connected with the home is it advisable to try to get these delinquents away from industry and commerce, and place them in the occupations that notoriously furnish an undue share of the delinquents?

Inmates of reformatories were originally classified chiefly on the basis of age. Experience in administration, the growth of psychiatry, and the understanding of personality have resulted in a change. In three New York institutions for delinquent women the percentage of those mentally defective varied from 23.3 to 33.5. Massachusetts has had a research station since 1911. During its first ten years it studied 1748 individual histories. These studies formed the basis of the treatment of the women and determined whether they should be recommended for parole. As in the case of the reformatory for men, women delinquents must be classified according to the nature of the individual rather than according to age or crime. Only by such methods can all kinds of delinquent women be handled so as to do the most possible to restore the inmate to normal life, and to keep in custody those who cannot in safety be returned to society. The most progressive states are emphasizing this kind of classification in order to individualize the treatment.[1]

The slow progress in the development of separate correctional institutions for women is illustrated in the history of the movement to establish a state reformatory for women in Connecticut. The act of 1917 for the establishment of such an institution was finally passed *fifty-three years*

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[1] Gillin, "Criminology and Penology," Chap. XXVIII, The Century Company, 1926; Rogers, A Digest of Laws Establishing Reformatories for Women in the *Journal of Criminal Law and Criminology*, vol. XIII, pp. 382–437, November, 1922.

after the initial attempt to secure the consideration of a correctional institution for women.

During this period of time, three distinct waves of public interest may be noted: the first from 1864 to 1867; the second from 1893 to 1909; and the third from 1901 to 1917.

The first began with an attempt to secure the consideration of institutions for both wayward girls and delinquent women. No result was obtained, and twenty-six years passed without further efforts to obtain similar legislation.

The second attempt to found a duplex institution for both men and women began in 1893 and continued until 1909, when the reformatory for men was established.

The third wave did not emerge as a distinct demand for a separate and independent institution for delinquent women until 1901. The first bill was introduced in 1901, the second in 1903, after which no legislation was attempted until the men's reformatory had been granted in 1909. Efforts were renewed in 1911, resulting in an unsuccessful bill, with a successful bill for a special commission in 1913, a fourth rejected measure in 1915 followed by victory in 1917.

During the movement as a whole, eighteen bills were introduced. Five of them proposed the use or creation of commissions; eight, the establishment of a woman's reformatory as a separate department in a joint institution for men and women; and five a separate and independent institution.

Certain generalizations as to social technique may be drawn from this long struggle. The movement was a protest against the treatment hitherto given delinquent women in Connecticut. Its ultimate objective was the establishment of an institution maintained by the state in which reformatory principles would be applied to their rehabilitation. Progress was found to depend on the education of the general public, and on the organization and direction of that opinion for legislative action.

"The obstacles to progress were an indifference based on subconscious satisfaction with the existing penal system and on lack of faith in the redeemability of the human spirit, particularly in the body feminine." Progress was also handicapped by "the antipathy of women to the public discussion of sexual problems, by the unwillingness of taxpayers to make a doubtful investment when more popular demands were before them, and by the resentment of those associated with the present system at the implied criticism and the proposed disturbance of that system."

From the slow progress certain advantages were derived. The development of the reformatory movement for the juvenile delinquents and for the young men offenders contributed most valuable experience without which the institution for women would not have been possible. Complete institutional separation of the sexes, the indeterminate sentence, the cottage system facilitating classification, reform through physical rehabilitation, employment and education rather than punishment and parole were reformatory principles contributed in the process of community discussion and education.[1]

Reformatories for Men[1]

New York	Elmira	1876
Michigan	Ionia	1878
Massachusetts	Concord	1884
Minnesota	St. Cloud	1888
Pennsylvania	Huntington	1889
Colorado	Buena Vista	1889
Illinois	Pontiac	1893
Kansas	Hutchinson	1895
Ohio	Mansfield	1896
Indiana	Pendleton	1897
Wisconsin	Green Bay	1898
New Jersey	Rahway	1901
Iowa	Anamosa	1907
Washington	Munroe	1907
Connecticut	Cheshire	1913
Oklahoma	Granite	1914
Maine	South Windham	1919
Nebraska	Lincoln	1921
U. S. Reformatory	Chillicothe, Ohio	1926

[1] "Handbook of American Prisons and Reformatories, 1929."

Reformatories for Women[1]

Indiana	Indianapolis	1873 Woman's Prison
Massachusetts	Framingham	1877 Prison-reformatory
New York	Bedford Hills	1900
New Jersey	Clinton	1913
Ohio	Marysville	1916
Maine	Skowhegan	1916
Kansas	Lansing	1916 State Industrial Farm
Iowa	Rockwell City	1918
Connecticut	East Lyme	1918 State Farm
Minnesota	Shakopee	1920
Pennsylvania	Muncy	1920 State Industrial Home
Nebraska	York	1920
Rhode Island	Howard	1922
U. S. Reformatory	Alderson, West Virginia	1928

[1] "Handbook of American Prisons and Reformatories, 1929."

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[1] Rogers, A History of the Movement to Establish a State Reformatory for Women in Connecticut in the *Journal of Criminal Law and Criminology*, vol. XIX, pp. 518–541, February, 1929.

Review Questions

1. Describe the types of prisoners with which reformatories deal.
2. What was Maconochie's contribution to the reformatory system?
3. What was Crofton's contribution? Describe the Irish system.
4. What other European experiments contributed to the development of the reformatory system?
5. Who were the leading American reformers?
6. Explain their relation to prison reform after 1870.
7. What was the main thesis of the declaration of principles adopted by the prison congress held in 1870?
8. Describe the establishment of Elmira Reformatory.
9. What were the chief features of the Elmira system?
10. What training had Brockway had as an administrator?
11. Describe the growth of the reformatory system.
12. What are some criticisms of the reformatories for men?
13. What classes of offenders are suited to reformatory treatment?
14. Is training for a skilled trade essential to reformation?
15. What is the main factor in determining when parole may be granted?
16. How long are reformatory inmates kept in custody? Why is it too short?
17. What is the place of agricultural training in reformatories?
18. What change has taken place in the human material received?
19. Describe the development of reformatories for women.
20. What are the characteristics of a woman's reformatory?
21. What are the present tendencies?
22. What are the problems involved in the treatment of delinquent women?
23. Discuss the soundness of the policy of training women exclusively for domestic service in the country.
24. What changes have been made in the methods of classification?
25. Describe the movement to establish a reformatory for women in Connecticut.

Topics for Investigation

1. Study the contributions made by Maconochie to the reformatory system. See the *Proceedings of the International Prison Congress*, pp. 162–204, 1872.
2. Study the Irish system as developed by Sir Walter Crofton. See Carpenter, "The Crofton System."
3. Describe the work of E. C. Wines and the New York Prison Association in the development of the reformatory system. See Henderson, "Prison Reform," pp. 64–87.
4. Study the declaration of principles adopted by the prison congress held in 1870. See Henderson, "Prison Reform," pp. 39–63.
5. Study in detail the Elmira system. See Wines, "Punishment and Reformation," Chap. X.
6. Study the career as a prison administrator of Z. R. Brockway. See Brockway, "Fifty Years of Prison Service."
7. Study the growth of the reformatory system. See Henderson, "Penal and Reformatory Institutions," Chaps. V–VII.
8. Make an evaluation of the reformatory system. See Nalder, "The American State Reformatory."
9. Describe the development of reformatories for women. See Gillin, "Criminology and Penology," Chap. XXVIII, and Rogers in the *Journal of Criminal Law and Criminology*, pp. 383–437, November, 1922.

10. Study the history of the movement to establish a reformatory for women in Connecticut. See Rogers in the *Journal of Criminal Law and Criminology,* pp. 518–541, February, 1929.

11. Discuss the relation between the juvenile reformatory and the adult reformatory. See Robinson, "Penology in the United States" p. 122 (Note) and Gillin, "Criminology and Penology," p. 621 (Note).

Selected References

1. Sutherland: "Criminology," pp. 410–412.
2. Gillin: "Criminology and Penology," Chaps. XXVII–XXVIII.
3. Robinson: "Penology in the United States," Chap. VII.
4. Wines: "Punishment and Reformation," Chap. X.
5. Brockway: "Fifty Years of Prison Service," Part II.
6. Henderson: "Penal and Reformatory Institutions," Chaps. V–VII.
7. Henderson: "Prison Reform," Chaps. I–III.
8. Barrows: "The Reformatory System in the United States."
9. Winter: "The Elmira Reformatory."
10. Extracts from *Penological Reports and Lectures* written by members of the management and staff of New York State Reformatory, Elmira.
11. "Handbook of American Prisons and Reformatories, 1929."

CHAPTER XII

INMATE SELF-GOVERNMENT IN PRISONS

The latest attempt to get away from the tradition of punishment to the view of criminals as members of human society, who require suitable remedial and educative treatment, has been made by Thomas Mott Osborne at Auburn and Sing Sing prisons in New York and at the Portsmouth Naval Prison. His Mutual Welfare League was an organization to be officered and managed by the inmates. Each industrial or maintenance unit elected one or more representatives to the board of directors. The board elected a secretary and an executive committee. There were subcommittees each headed by a member of the executive committee. These committees at Sing Sing were: membership, industries, hygiene, education, athletics, entertainment, music, visitors and outside employment.

When there were any cases of discipline, court was held each afternoon and the offenders brought before the judiciary body or court. Punishment consisted of exclusion from the league with the consequent loss of all privileges. An appeal to the warden's court was provided for. This court was composed of the warden, the principal keeper, and the doctor. The discipline was largely in the hands of the league. Guards were withdrawn from the mess hall, the workshops, the school and the chapel, but they were increased on the walls.

The league had charge of the recreation; baseball was organized; there was a swimming pool for the summer and walking in the cell yards for exercise in the winter. After the count had been taken in the cells, educational classes, lectures and entertainments in the evening were carried on by the league. Attendance at all of these activities was limited to members in good standing.

Osborne's idea of a league is a practical method of securing the cooperation of the prisoners in the administration of the prison. Corporate responsibility is worked out gradually. The prisoners ask for "privileges," such as for social gatherings, recreation and the removal of useless restrictions. More opportunity for self-discipline, mutual aid and self-improvement means more responsibility. A common conscience grows, and the better nature unfolds, and qualities and capacities, formerly inhibited, appear. The sense of loyalty to each other is developed. The same qualities which make a dangerous criminal are assets when he goes straight. Osborne believed the dangerous and desperate criminal was the hero gone wrong.

Inmate self-government is based on the loyalty of prisoners to one another, while the honor system consists of rewards and privileges granted by the warden for good behavior and loyalty to him. Perhaps the distinction is rather vague and indefinite, but in actual practice the honor system may be merely a cloak for favoritism and bargaining, as was the case under Warden Tynan of the Colorado State Penitentiary. Inmate self-government is a misleading description and is also a contradiction in terms. Prisoners are ultimately under the control of the officials of the institution. No matter what freedom or self-control may be allowed them, it is something granted to them and may be taken away at any time. "Inmate participation in government" more correctly indicates the nature of the arrangement, which places a limited responsibility on the prisoners as a body, and induces them to cooperate with the authorities out of loyalty to one another. Other descriptions of the plan are "corporate responsibility of prisoners" and "inmate community organization." These terms visualize the prison population as a community, sharing common experiences and having common interests, and having an organization under their own elective officers and committees for the regulation and management of their common affairs.

Crime is the concrete manifestation of selfishness. The criminal is an antisocial person. Convicted offenders more than all others need to be taught the value of service to others. "No sound prison system can exist that is not based upon training men to recognize the rights of others and encouraging them to cultivate the sense of social responsibility which is at the basis of law-abiding, honest and useful citizenship."[1]

HISTORY OF SELF-GOVERNMENT

The originator of the idea of self-government is William R. George, the founder of the George Junior Republic in 1895 at Freeville, New York. The Republic is a model village, composed of boys and girls, sixteen to twenty-one years of age, committed to the care of Mr. George because of delinquency or for other reasons. Self-government and self-support under sympathetic supervision are the basic features. The republic is modelled after the state and national government with a president, vice president, cabinet, judges, courts and prison. There is a "town meeting" for legislature purposes. A large measure of success has been attained and widespread interest aroused. Within fifteen years there were some seven or eight republics established in different places. In 1912 Calvin Derrick, who had been associated with George in his work at Freeville, became the superintendent of the Preston School of Industry, a boy's reform school at Ione, California. At the request of a group of the boys, he drafted a constitution for them to play with. He made it intentionally faulty. The boys amended it gradually and other groups adopted it. The groups or houses formed something in the nature of states in a federal government. Later, as warden of Westchester County Penitentiary, New York, Mr. Derrick demonstrated that self-government could be successfully used with short-term local prisoners.

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[1] "Handbook of American Prisons, 1926," pp. 30–33, 58, G. P. Putnam's Sons, 1926.

Early experiments with self-government were made by Joseph Curtis in 1824 at the New York House of Refuge and by the Rev. E. M. P. Wells at the Boston House of Reformation from 1828 to 1833.[1]

These experiments were almost entirely with juvenile offenders. It remained for the late Thomas Mott Osborne (1859–1926) to develop the principle in a penal institution for adults. He had been president of the board of trustees of the George Junior Republic for fifteen years and during those years he conceived the idea of applying self-government to adult prisoners. He read Donald Lowrie's "My Life in Prison," which was published in 1912. In 1913 he was made chairman of a state commission on prison reform. He was anxious to study penal conditions from the inside and he arranged with the warden of Auburn Prison, located in the city of Auburn, New York, his lifelong home, to spend a week in the institution. The week he spent there from September 28, to October 5, 1913, resulted in mutual welfare leagues, organizations of inmates at Auburn, at Sing Sing and at the Portsmouth Naval Prison. Osborne was warden of Sing Sing from December, 1914, to October, 1916. In 1917 he was given charge of the Portsmouth, New Hampshire, prison, where he remained until June, 1920. He began his service there by spending a week on a penal ship.

When Mr. Osborne arranged to spend the week in Auburn Prison, it was decided that he should do it openly, and he addressed the prisoners, explaining his motives the day before he was formally committed. The warden gave orders that he was to be treated like other prisoners. He was to work in a shop with a reputation of being difficult from the point of view of discipline, but where conversation with his mate was allowed if done quietly. He also spent part of a day and a whole night in the punishment cells. By this action he gained first-hand knowledge of prison conditions and came into close contact with the prisoners. His shopmate was Jack Murphy, who was the suggester of the idea of the Mutual Welfare League, and, with Osborne, its joint founder.

Osborne's conclusions as a result of his week in prison were: (1) that the physical conditions for prisoners were bad and gave no opportunity for normal human development; and (2) that the system of self-government developed at the George Junior Republic was applicable to any prison for adults. The Mutual Welfare League was the immediate outcome of the week of voluntary imprisonment.[1]

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[1] Lewis, "The Development of American Prisons and Prison Customs, 1776–1845," pp. 299–309, The Prison Association of New York, 1922.

THE MUTUAL WELFARE LEAGUE

On December 26, 1913, a committee of forty-nine was elected by the inmates of Auburn Prison to determine the nature and organization of the league. The committee sat on the same day with "Tom Brown" (Osborne's prison name), acting as chairman, and discussed the matter. In January, 1914, the league was organized and its membership included nearly all the inmates of the institution. Its object was declared to be "to promote in every way the true interests and welfare of the men confined in prison."

The first governing body at Auburn consisted of a board of forty-nine delegates elected every six months, who selected an executive committee of nine from their membership. The executive committee appointed a clerk and a sergeant at arms, who could name as many assistants as necessary. The Board of Delegates was at first divided into eight grievance committees, of five each, to hear and determine complaints against members. Later modifications were made in the number and functions of these committees. Suspension from the league was the only punishment that could be enforced by the prisoners themselves. The secretary was the chief officer of the league, and he generally presided at meetings. He gave all of his time to the work of the league, and was a very busy man, with an office next to that of the principal keeper.

The league gradually extended its scope by gaining the confidence of the warden and asking for one "privilege" after another. It first asked to have Sunday afternoon meetings in the chapel. This privilege was largely a means by which the prisoners could have release from some of the worst periods of monotony without giving more trouble to the officers. The marching of prisoners from cells to meals and to work was early undertaken by the league. Then guards were withdrawn from the workshops and the prisoners were left with the foremen.

Mr. Osborne became warden at Sing Sing in December, 1914, and a branch of the Mutual Welfare League was soon organized there Sing Sing was one of the last places where a believer in self-government would have chosen to form a branch. It has one of the worst prison buildings in the world, and there was a mixed lot of prisoners, young and old. Probably no severer test could have been made of the new method of prison discipline. There had recently been riots at Sing Sing, and the prison was, consequently, in an unsettled condition.

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[1] Four books contain the history of the development of the idea of the Mutual Welfare League: GEORGE, "The Junior Republic," D. Appleton & Company, 1910; GEORGE and STOWE, "Citizens Made and Remade," Houghton Mifflin Company, 1912; OSBORNE," "Society and Prisons," Yale University Press, 1916; OSBORNE, "Within Prison Walls," D. Appleton & Company, 1916.

When Osborne took charge, he warned the prisoners that they had their fate largely in their own hands. He told them that the average man outside of prison would judge the new plan by the results it produced in the form of more and better work. A comparison of the statement of the prison industries for the fiscal year of 1913 to 1914, under the old conditions, with that of 1914 to 1915, under the new, indicates that the men realized the soundness of the warden's position. The gross sales of products in the year 1913 to 1914 amounted to $318,733.59, and in 1914 to 1915 to $354,327.89, an increase of $35,594, or about 11 per cent. The value of the goods manufactured in 1913 to 1914 was $282,093.83 and in 1914 to 1915 it was $342,816.39, an increase of $60,722.56, or about 21 per cent. The profit from the industries in 1913 to 1914 was $40,833.69, and in 1914 to 1915 it was $82,084.21, an increase of 100 per cent under the Osborne regime. The percentage of profit under the former management was 14 per cent; under Osborne it was 24 per cent.

The per capita cost of officers' salaries at Sing Sing under Osborne was far less than at any of the other three state prisons. At Great Meadow, with an average daily population of 712, the per capita cost was $94.14; at Clinton, with a population of 1,447, it was $88.35; and at Auburn, with a population of 1,429, it was $88.53. At Sing Sing, with a population of 1,616, it was only $80.85.

One of the most striking results of the operation of the league in Sing Sing was the improvement of prison discipline. In previous years fights among prisoners and attacks by prisoners upon guards were so frequent that no record was kept of them unless a wound was severe enough to be treated in the hospital. Estimating the prevalence of fighting by the number of wounds treated by the prison physicians, the discipline under Osborne was better by 64 per cent than during the two fiscal years previous to his administration. During 1912 to 1913, with an average of 1,442 inmates, there were 383 wounds treated, and in 1913 to 1914, with an average of 1,466 inmates, 363 wounds—an average for the entire period of 1,454 inmates and 373 wounds. During the fiscal year 1914 to 1915 under Osborne, the number of inmates averaged 1,616, and the number of wounds was 155. To keep pace with the two previous years, the number of wounds should have been 414. The comparison is hardly fair to Osborne, for under the old system the men often concealed their injuries rather than be punished for fighting. The regime of the Mutual Welfare League made concealment impossible. Before the establishment of the league, many of the wounds received by prisoners were the result of assaults upon guards. Under Osborne there was only one such assault during 1914 to 1915, and the guard refused to make a complaint because he believed the prisoner to be deranged.

The general betterment of conditions under Osborne is also indicated by the smaller number of men driven insane by prison environment during 1912, 1913, 1914, and 1915. In 1912, with a prison population of 1,488, it was necessary to transfer 32 to the State Insane Hospital; in 1913 with 1,442 inmates, 48 were transferred; in 1914 with 1,466 inmates, 27 were transferred; while in 1915, with the largest number of inmates in the history of Sing Sing, only 19 men were transferred.

Under Osborne in 1915 there were three escapes. In 1913 there were ten, in 1912 six, in 1911 four, in 1910 seventeen, and in 1909 nineteen. The control of Warden Osborne over the men in his confidence is shown by the fact that, on the night of one of the escapes, he sent fifteen prisoners out to search for the fugitive, all of whom returned, although six of them were away most of the next day. Another daring experiment occurred when the delegates of the league held an election, and the count was not completed until after one o'clock in the morning. The warden invited the delegates into his house, sent for his cook and butler, both convicts, and served sandwiches and coffee. The warden's house, which has no bars on windows or doors, is outside the prison walls; there was no guard within a hundred feet of it. The New York Central Railroad tracks are just under the windows on one side, and the public highway on the other.[1]

An enormous amount of publicity was given Osborne's experiment at Sing Sing, and friction developed between him and the State Superintendent of Prisons. Early in November, 1915, the grand jury of Westchester County began investigation and, on December 28, returned two indictments against Osborne—one for perjury and the other for mismanagement on six different counts of official and personal misconduct. On December 31, 1915, at his own request, he was granted leave of absence pending trial, and his friend, Dr. George W. Kirchwey, was made temporary or acting warden. In July, 1916, the charges having broken down, Osborne was reinstated. During this interval a new state superintendent of prisons had been appointed, but friction again developed between the two officials, and Osborne, becoming convinced that the authorities were working against him, finally resigned in October, 1916.

In 1917 Mr. Osborne was given charge of the naval prison at Portsmouth, New Hampshire, and remained there until June, 1920. Here he organized another branch of the Mutual Welfare League. He found 170 prisoners with 180 marines or guards, but in a short time he had withdrawn all of them. It should be remembered that the inmates of the naval prison consisted of very different types of prisoners from those to be found in the ordinary penal institution. Osborne was given a free hand by Secretary of the Navy Daniels to apply his own theories of prison administration. As at Sing Sing, his methods aroused opposition, some of it political in its nature, and some of it based on honest doubt as to the practicability and wisdom of his policies. Charges of maladministration and immoral practices were inquired into by a special board of inquiry, appointed by Secretary Daniels and composed of the assistant secretary of the navy and two rear admirals. This board found the charges untrue. Only eight prisoners out of over 6,600 escaped in a period of over two years. The board also found no indication that "the prisoners in any way constituted a menace to the safety of the Navy yard, of the inhabitants or property in the communities of Kittery, Portsmouth or surrounding territory."[1]

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[1] White, The True Sing Sing: One Year's Record under Warden Osborne, in *The Outlook*, vol. CXII, pp. 42–47, Jan. 5, 1916.

Results of the League

Certain results seem to be indisputably credited to the Mutual Welfare League. They come for the most part under two heads: improved discipline and individual conversions. At Sing Sing riots ceased; escapes, assaults and fights were very greatly reduced; drug taking and vice were severely dealt with by the prisoners themselves; and the output of the industries was increased. There is no doubt that the system proved itself useful from an administrative and disciplinary point of view.

Improved discipline could hardly be achieved without individual conversions. The Mutual Welfare League uncovered much fine gold in men like Jack Murphy, "Canada Blackie" and other dreaded criminals of whom the old regime had despaired. "Canada Blackie" was a notorious criminal, who was in prison for "life and ten years" at the time the new organization was started at Auburn. He had been in solitary confinement for years on account of his supposedly desperate character. He became one of the model prisoners under the new plan. The story has been told by Anne Field[2] and Mr. Osborne has sketched it in "Society and Prisons."

Under rigid discipline the troublesome prisoner who refuses to conform to the rules and regulations of the institution is secretly admired and encouraged by his fellow prisoners, while under the new arrangement he becomes a nuisance, endangering the privileges of the whole body. Group pressure is exerted in favor of the observance of the necessary requirements of the administration rather than against them. Dr. Kirchwey sums up the matter as follows:

"Viewed from the outside, the League is an ingenious device for utilizing the goodwill and talent of the inmates in the production of better discipline, better work and a better disposition in the prison. Viewed from the inside, it is a means and a process of moral regeneration. The material advantages of better administration are the by-products of the moral process."

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[1] Hobhouse and Brockway, English Prisons To-day, being the *Report of the Prison System Enquiry Committee*, pp. 671–686, Longmans, Green and Co., 1922; *The Survey*, vol. XXXVIII, pp. 444, 445, Aug. 18, 1917, and vol. XLIII, pp. 797, 798, Mar. 27, 1920; "The American Year Book, 1915," pp. 408–409 and "The American Year Book, 1916," pp. 401–402, D. Appleton & Company, 1915, 1916; Jaffray, The Prison and The Prisoner: a Symposium; Osborne, "Self-government by the Prisoner," pp. 101–106, Little, Brown & Co., 1917.

[2] Field, "The Story of Canada Blackie," E. P. Dutton & Company, 1915.

The changes in mental and spiritual conditions brought about by the league are difficult to measure or to describe in words. The prisoners being allowed out of their cells and in the open air a great deal more, their physical health improves, resulting in a more normal state of mind. Before Osborne became warden at Sing Sing the prisoners were in their cells from 4:30 p. m. to 7 a. m. every day and all day Sunday except for two hours. This means that from 4:30 p. m. Saturday until 7 a. m. Monday, except for two hours, they were locked in their cells. They spent 111 out of 168 hours each week in their cells. The locking in the cells on Sunday was necessary to release some of the guards so that they could have time off over the weekend. Under Osborne the number of hours in the cells was reduced to 73 a week because of the sharing of responsibility in control by the prisoners. Fewer guards were needed inside although on the walls a strong force was always maintained.

The change in attitude among the prisoners is indicated by the words of a prisoner quoted by Mr. Osborne: "Do you realize what the League has done here? Let me tell you. It has started the men discussing the right and wrong of things, every day, from one end of the yard to the other." Another prisoner, a New York pickpocket is reported as saying: "You can't hear anythin' round dis prison now, 'cept how we're goin' to make good when we goes out."

So far as the officers are concerned, the league removed from them a load of distrust and nerve strain. A prison official, who had been at Sing Sing for over twenty years, declared that two years under the new system had convinced him that it was as beneficial to the officers as to the inmates. When the new plan was introduced, he had had little faith in it, but in his opinion it had stood the test. Considerable economy in officials as mere guards becomes possible, and officers can turn from policing prisoners to the more interesting and pleasanter work of helping them.

One of the first requests of the league at Auburn was to allow a prisoner known as "Coney Island," who had been in solitary confinement over a year and was considered incorrigible, to be released to work with other prisoners in a department where there were no guards. He had been in constant trouble when with other prisoners before. The request was granted and he became a well-behaved and trustworthy man. Many times prisoners, whose records had been bad under the old system, became reliable and satisfactory after the league was established. There is material for pages of stories of this kind in the records of Auburn and Sing Sing.

The moral rehabilitation of the inmates of a prison, the transformation of men who prey upon society into useful citizens, and the changing of human liabilities into human assets are the chief ends of the new penology. The results at Sing Sing under Osborne seem to justify his belief "that the true foundation of a new and successful penology has at last been found." Briefly, as Osborne declared, "the thing works."

Some weak points in the plan have been found. Not all the prisoners respond. Some seem to feel themselves superior to it and others are too weak mentally. For a time there seemed to be a tendency to slackness on the part of the officers. They appeared to resign their duties to the prisoners. Possibly a more serious difficulty is indicated by the fact that at Sing Sing it seemed necessary to devise new interests to hold the prisoners to the plan. The multiplication of committees was perhaps the result of the demand for emotional stimulation. No sound conclusion can yet be formed as to the possible limitations of inmate participation in prison control. Too short a period of experience and comparatively few tests do not furnish data for final judgment. Under a man like Osborne it really works. It would seem that it could hardly fail to be an improvement upon the existing system of prison discipline. Whether it will work permanently without a man like Osborne remains to be proved.[1]

THE SOCIOLOGY OF SELF-GOVERNMENT

Obviously, the prisoners know more about the working of the prison system than anybody else does. It is, therefore, a great advantage to have their knowledge available for improving the efficiency of the prison. It becomes available as soon as the prisoners have an opportunity to give it. They cannot feel responsibility in giving information unless they have a share in producing results and are consulted as a group organized in their own way. They must choose and be responsible for any representatives that may be needed. They must be consulted honestly and regularly, and they must be taken seriously into partnership in the work for their own betterment. Successful participation in administration by the inmates can only be accomplished on the principle that the prison is for the good of the prisoners, subject only to the public interest in protection and reformation.

Corporate responsibility is worked out step by step by the prisoners, with the sympathetic help of the officials. The principle of the primary group is applied. At an election in Sing Sing, there were three tickets: those who were in office and wanted to stay in; the independents who wanted to get in; and the long-timers, who had the most to lose if the system went wrong, and were, consequently, the responsible party. At a trial held by a committee of inmates, a young man, who was doing life for murder, was the presiding judge. There seemed to be no evidence justifying the continuance of the trial, but the judge declared that was not the point. Probably the fellow being tried was not guilty, but "some of the witnesses are lying, and we have got to learn to tell the truth or this darn machine won't work." In other words, a sense of personal responsibility must exist exactly as, in a primary group, each member has an inherent feeling that upon him depends the ultimate good of the group. The informal social control of a neighborhood replaces the rigid discipline of the ordinary prison. Such a community is necessarily social. The members cannot leave and what is done by one has an influence upon the rest. Group disapproval tends to make a troublesome prisoner social. Conformity to the needs of the group is the basis of comfortable existence and becomes the rule. A sense of social responsibility develops where there had been none because the criminal had had no social interest in community life. These "inner enemies" of society learn the value of social solidarity by concrete experience of its results. They are socialized by actual social contacts—an entirely new kind of life for many of them.

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[1] HOBHOUSE and BROCKWAY, "English Prisons To-day," pp. 671–686, Longmans Green and Co., 1922.

Under the league idea the new prisoner is drawn into the social life of the institution. Service on committees arouses interest in games, moving pictures, and education. The ordinary desire for recognition is sufficient usually to draw him into the new system. Instead of brooding upon the past, he is busy with new interests and associations. The social pressure of a prison democracy gives a new outlook upon life.

Mr. Osborne felt that the old system of rigid discipline killed initiative, the power of choice, the ability to form judgments, and every other faculty needed in the world outside. He regarded it as absurd to hold men for three, five, ten or fifteen years in an environment as unlike that of ordinary life as it is possible to arrange, and to expect them upon release to take a normal place in society.

The aim of the prison should be, of course, to prepare prisoners for life outside prison, and one of the merits of inmate participation in administration is that it prepares prisoners for the future by making life in prison as much as possible like life outside—prepares for freedom by giving as much freedom as possible while they are still prisoners. Instead of a rigid discipline with many rules, we have a responsible share in the management of many activities of interest to the prison population. The inmates realize that upon their own conduct and upon that of their associates will depend the continuance of many privileges. Their own self-interest will compel them to conform to reasonable regulations, in the making of which they have had a share, and will also incline them to bring pressure upon others to do the same. Here we have the same influences prevailing that contribute to the well-being of society outside the prison walls. These influences make not only good prisoners but also good citizens ready to take a responsible part in ordinary society, when released, instead of returning to the antisocial practices by means of which they have previously preyed upon society.[1]

Dr. Stuart A. Queen, in a lecture on social work in prisons and reformatories, points out that everyone influences and is influenced by many persons. "What each of us is, within the limits set by heredity, is the result of our experiences especially in relation to other people. Our very personality is the product of our give and take with others." Cooley's "looking-glass-self" suggests the fact that "our ideas of ourselves consist largely, if not wholly, of what we think other people think of us."

> The first practical suggestion from the social nature of man is that it is well to find out whose judgment of him influences a prisoner. For whose good opinion does he really care? The second suggestion is that the opinion which fellow prisoners and prison officers have of him is going to be pretty decisive as to what the man turns out to be. If he is expected to be a liar, a loafer and a thief, he is very apt to be just these things. If he be looked upon as a persecuted victim of the world, he is pretty sure to waste a lot of energy feeling sorry for himself. But—assuming now that we are dealing with a "normal" man—if he be regarded as a man who has "gone wrong," but who has a chance to "come back," he is very apt to respond with a real effort to "make good."
>
> Our fourth point is in a sense only a modification of the third. It is that we all live in social groups. There is no such thing as a completely isolated human being. We all "belong" to a family, a club, a gang, a neighborhood, a church or some other group. These groups have customs, standards of right and wrong, codes of behavior, and this is no less true of hoboes, pickpockets and auto thieves than it is of the "best families."
>
> Does it not seem shortsighted to deal with the criminal as though he were a being apart? Can he be really influenced for the better unless those whose opinions affect him expect something better of him than they have in the past? Or unless, cutting loose from them, he associates himself completely with a different set of folks? In other words, to reform a criminal it would seem necessary either to reform his group, or to get him out of his old group and into another.
>
> Specifically this calls for group life within the prison—even under a repressive prison management, prisoners do associate with one another. Would it not be better to plan and control these associations and groupings rather that on ignore or try to suppress them?[2]

The quotation from Dr. Queen sums up the sociology of self-government in general terms. Popular opinion regards "the prisoner as a person to whom something is to be done, but not as a person who is going to do something in return. He is regarded as the passive recipient of punishment or treatment, but not as an active human being." The social process is not understood in all its varied manifestations. We see only one side of the shield and ignore what is plainly shown on the other side. Social forces are at work all the time and everywhere. They are not suspended at the door of the prison any more than in other regions where the honest and law-abiding people are living. The public outside influence the prison group and prison society reacts upon the outside society. Osborne's system of self-government recognizes this interaction and undertakes to reorganize prison society along sound sociological principles. All social problems are in the last analysis problems of group life, although each group has its own special problems. Religious conversion may be described as a change from one social group to another. The same analysis holds true in the reformation of the criminal. The primary group consciousness of the professional criminal must be converted into a cummunity consciousness. Again we have the breaking up of old associations and the establishment of new relations. Loyalty to a group hostile to the community must be replaced by the same loyalty to the community as a whole. The life of "sin" must be discarded for a life of "grace."[1]

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[1] HOBHOUSE and BROCKWAY, "English Prisons To-day," pp. 671–686, Longmans, Green and Co., 1922; TANNENBAUM, "Wall Shadows," Chap. II, G. P. Putnam's Sons, 1922.

[2] QUEEN, Social Work in Prisons and Reformatories, Boston, 1922. A lecture delivered at the State House, Mar. 14, 1922, in a series on penology.

Growth of Self-government

The Mutual Welfare League has continued to exist at Auburn and Sing Sing. At Auburn the character of the league has changed, and, although it has lost a good deal of its constructive character, it is still a factor in the discipline of the prison. At Sing Sing the league has been a considerable though varying factor in the prison discipline. As at Auburn, it appears to have lost a considerable portion of its constructive character, but, in the opinion of the warden, it has kept the prison free from serious disturbances such as fires, riots and strikes. In both institutions the league's sergeant at arms supervises the grounds during recreation periods and at entertainments. There is less of the unnecessary and unnatural restraint on the prison population at Auburn and Sing Sing than in many prisons of the country, and this is due to the Mutual Welfare League, which still retains its influence, but, instead of accomplishing its fundamental purpose of training men to take their places again in society, it has largely come to be a convenient aid in securing easier and better discipline.[2]

At the Portsmouth Naval Prison the Mutual Welfare League was discontinued when Secretary Denby came into office in 1921. The reason for such action is obvious. The navy with its strict military discipline could not adopt, with any degree of permanence, such a method of dealing with its offenders. That the league was a success during its existence is shown by the fact that of 8,000 or more men who passed through the institution during its existence, over 2,500 were restored to duty. The greater number of these not only served out their enlistments but also many were eventually released from the service with honorable discharges by officers more or less hostile to the idea. There was also a marked improvement in discipline and general morale.

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[1] Park and Burgess, "Introduction to the Science of Sociology," pp. 48–49, 562, The University of Chicago Press, 1921.

[2] "Handbook of American Prisons, 1926," pp. 410, 415–417, 444–445, 447, 449–451, G. P. Putnam's Sons, 1926.

Besides the leagues at Auburn and Sing Sing established by Mr. Osborne, there are definite organizations in five other institutions: East View, New York, Westchester County Penitentiary, The Effort League; Wilmington, Delaware, The Honor Court; Jackson, Michigan, Harmony, Honor and Justice Club; Thomaston, Maine, Welfare and Honor League; Frankfort, Kentucky, Welfare League.

The Effort League at East View, organized by Calvin Derrick, is very similar to the Mutual Welfare League and has been equally successful. It differs in its form of organization for, while there is a board of delegates, there is no executive committee. In its place there is a cabinet consisting of a president, vice president, judge, secretary, sergeant at arms and public defender. All these officials are elected by the entire membership and their duties are similar to those of the executive committee. The inmates' court has the power of investigation in all cases of discipline and is responsible for the establishment of a good relationship between the offended and the offender. It can reprimand where good relationship cannot be arranged. In serious cases where punishment is necessary, the court can only report to the prison authorities as they have no punitive power. When an inmate is suspended from the league, he can be reinstated only upon the recommendation of the warden. The members of the board of delegates are elected for a term of three months, and those of the cabinet for a term of four months.

The Honor Court at Wilmington, Delaware, is composed of eight members. It deals with all matters having to do with the discipline, recreation, entertainment and welfare of the inmates. The court makes rules and offenders are given a hearing before three judges selected from the membership of the court. All penalties imposed must have the approval of the warden. There is no regular term for the members of the court. Whenever a vacancy occurs, an election is held. The members, however, are subject to recall at any time.

At Wilmington the prisoners replace the guards. With a prison population of over 400 men, there are only two guards in the day and one at night—a system of inmate responsibility attempted nowhere else. Even though it may be thought that the reduction of guards has been carried too far, a striking demonstration has been made that a prison can be conducted practically without guards, without serious internal disturbances and without an unusual number of escapes. Such an experiment raises the question whether the very considerable part of the heavy cost of the employment of many guards, chiefly to prevent riots and escapes, is necessary. This system of inmate cooperation was established in 1921 and has continued under two wardens.[1]

The Harmony, Honor and Justice Club at Jackson, Michigan, has a president, vice president and secretary elected by the prisoners as a whole. It meets weekly. It was organized primarily to direct the recreational activities and to provide entertainment for the inmates. Its officers are responsible for the maintenance of discipline in accordance with rules determined by the warden. All breaches of discipline must be reported directly to the warden. The club is much more limited in its powers than any of the organizations previously mentioned. It is simply an aid to good administration. The club functions only at the brick and tile plant, the cement plant, and the prison annex (the new prison) which are at a distance from the main prison.[2]

The Welfare and Honor League at Thomaston, Maine, has a board of governors of five members, one of whom must be a prisoner sentenced for life. They are elected for a term of one year by the prisoners as a whole. They act as aids to the warden and as teachers of law and order and good citizenship among the men through counsel and advice. They supervise the conduct of the men on the athletic grounds and have full authority to enforce the rules. All punishments are administered by the warden. The governors attend the warden's court and are permitted to bring to the attention of the warden any facts that may assist in determining the guilt of the accused and in measuring the degree of punishment.[3]

In addition to the groups described, a number of other prisons throughout the country have committees of inmates organized for some form of activity, such as recreation, entertainment or education. These committees are selected in various ways, sometimes by election from the prison population at large, sometimes by a selected group, and in a few instances by selection of the warden, deputy warden, chaplain or other officials. The principle of inmate participation in government is recognized, but its application is limited. Furthermore, inmate cooperation must not be confused with the "honor" or "trusty system" to be found in some prisons. The "honor system" is based upon the relationship between the warden and the prisoner. A relationship of this kind is a selfish bargain and is bad training for life outside. The "honor system" cannot but create a feeling of hostility in the minds of a majority of the prisoners not only toward the warden but also toward the "trusted" convict. To the honor men go all the easy jobs and special privileges. The other men often feel that the trusty has obtained his influence through being a stool pigeon or spy. Unfortunately, this sometimes happens to be true. Whether it is or not, the effect is the same.

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[1] "Handbook of American Prisons, 1926," pp. 167, 171, 174–176, G. P. Putnam's Sons, 1926.

[2] "Handbook of American Prisons, 1926," pp. 296, 299, G. P. Putnam's Sons, 1926.

[3] "Handbook of American Prisons, 1926." pp. 255, 258, 263, G. P. Putnam's Sons, 1926.

While the movement for inmate organization has proved successful in most cases, it has been discontinued in three instances:

First, Cheshire Reformatory, Connecticut, where it was started in 1915 and was in operation less than a year.

Second, Rahway Reformatory, New Jersey, started in 1915 and abandoned at the end of the year.

In both of these cases the reason given for discontinuance was that such organizations lent themselves to misrule and dishonesty and that the inmates became discouraged. These experiments were short lived and experienced observers are inclined to doubt whether the right kind of official guidance was supplied. Without proper official guidance inmate participation in administration cannot but fail. Perhaps "what self-government needed at these two institutions was an arrangement for the 'recall' of arrogant and recalcitrant officials by the inmates themselves."

The third instance of discontinuance was at the Portsmouth Naval Prison, already described.[1]

In spite of Osborne's efforts prison discipline as a whole is still rigid in character and is still mass discipline. It takes little account of the individual. It is blind to the need of preparing for the time when the discharged prisoner will not have someone to direct his activities. Prison discipline has as its aim good prisoners, not good citizens.

Self-government is aside from the main line of present criminological thinking. We are discovering that many criminals are the victims of abnormalities and defects that have a direct causal relation to their offenses. Self-government ignores such individual factors. Its emphasis is upon socialization rather than individualization of treatment.

The findings of psychology and sociology and the results of the experience of three-quarters of a century are against imprisonment as a method of reformation. If we are to turn back to society larger numbers of our prisoners, we must modify the prison system. In the light of the hopes of the early prison reformers it has miserably failed. In the face of the social progress of the last century, it stands out as an anachronism.

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[1] WINES, "Punishment and Reformation," (edition revised by W. P. Lane) Chap. XIV, Thomas Y. Crowell Company, 1919. Besides the "Handbook of American Prisons," I have had the use of an unpublished paper read by William D. Cox, field secretary of the National Society of Penal Information during the meetings of the National Conference of Social Work at Des Moines, Iowa, in 1927.

"The way we treat our criminals insults our social intelligence, outrages our humanitarian sentiments, challenges our religion and flouts our advances in science and education. Why do we not mention our prisons in the same breath with our hospitals?"[1]

Society has been "punishing" criminals by making them more criminal, administering "justice" by rendering the man already unable to resist evil still more incapable of either helping himself or receiving help from others. We treat the antisocial individual in such a way that he can hardly avoid becoming more antisocial. We train him for a return to social life by shutting him away from all normal contacts with other human beings. Why are we so unwilling to apply to social problems and situations the facts of scientific knowledge? We have done it with wonderful results in the field of business and in the development of the material aspects of our present civilization.

The day of autocratic government has gone. What the *Chicago Tribune* in 1914 described as the "twilight of the kings" has settled into complete darkness. Self-government in industry, among students, and in penal and reformatory institutions is inevitable, although the process will be an evolutionary one. The cure for the faults of democracy must be more democracy unless we are ready to believe that all the progress of recent centuries is an illusion or a delusion. The social treatment of crime depends upon the recognition of the sociological nature of crime and the intelligent application of the results of sociological research.

OSBORNE'S PLACE IN PRISON REFORM

Just where Thomas Mott Osborne will stand in the history of the efforts to make prisons more intelligent places cannot be foreseen as yet. It need surprise no one if he ranks finally with Beccaria, Bentham and Howard, who in their own time protested against the abuses and absurdities in the treatment of offenders.

Osborne's maternal ancestors were old New England Puritans, who at an early date intermarried with Pennsylvania Quakers, and his activities revealed the best qualities of both inheritances. Lucretia Mott was his great aunt and his mother's sister married a son of William Lloyd Garrison. His father was a fine type of the self-made builder of a fortune, who is liked and trusted by the people of his own community. Osborne was his only son. After graduating from Harvard in 1884, he served an apprenticeship in his father's business of the manufacture of farm implements, which was an important factor in the growth of Auburn. In 1886 he became president and continued as president for seventeen years, when the business was absorbed by the International Harvester Company. During these years he was the leading spirit in the social, charitable, musical and dramatic life of the city. He served on the board of education and was mayor for two terms. He became a Democrat in 1888, although his family had been Republican, and he remained a Democrat throughout his life, except that he did not support Bryan and "free silver" in 1900. His relations to labor were friendly and came about through the hundreds of employees, whom he had in a sense inherited, and with whom he had grown up. He was a good citizen and inspired in his fellow citizens confidence and affection, for all of his contacts were *personal*, and this was the key to his life. "He was not an abstract thinker nor a man of dogmas, but a practical, sensitive, galvanic, enterprising, fearless experimenter who trusted his instincts and moved on from one enterprise to the next as life presented them."

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[1] GILLIN, "Criminology and Penology," pp. 544–545. The Century Company, 1926.

At what date Osborne first became interested in prison reform is not known. Auburn Prison was located in his home town and it was inevitable that he should include it in his civic interests. At an early period he became impressed with the failure of judicial and penal institutions to aid in the moral reform of those who had fallen into the hands of the law. His acquaintance with prisoners filled his mind with illustrations of the evils of the whole system. He studied the literature of prison reform, but books and theory never turned his attention from the convicted man. "All historic and psychological theories about the 'criminal type,' the 'criminal class,' fell on his ears in vain. He could find no type, he could see no class, he could see only men who were helpless, suffering, caught in the treadmill of physical and moral perdition. His mind gradually focussed upon a single question, which had been confused and all but lost in the technical literature of the subject. This question was how to reform the individual prisoner."

The fortunate combination of a sympathetic governor and a friendly warden at Auburn enabled him to introduce his Welfare League into that prison. He also established an honor camp, where selected prisoners were allowed to work on the roads unguarded and to receive pay for their labor. His plans worked so well that a later governor appointed him warden of Sing Sing for the purpose of introducing his new system into that institution.

His experiences at Sing Sing were entirely unlike those he had had at Auburn. The prison authorities resented his appointment and were made angry by his militant attitude. He was intolerant of the "stupidity" of his superiors and interpreted their interference in his administration as a deliberate attempt to make it fail. He was free in his criticism of the "old system" as he called it, and this was resented by the wardens of the other prisons as criticism of themselves. The "system," which Osborne replaced, included contracts for supplies of all kinds and the graft incidental to them. He was an up-state man and a Democrat. He was holding a lucrative office that had always been a perquisite of the machine in Westchester County. The state government was in Repub lican hands, and his official superiors were his party opponents.

The almost inevitable result of such a situation was an attack upon Osborne, inspired by his political opponents, and supported by the "system" which he had attacked. His indictment by the grand jury for disobedience to his superiors included charges of homosexual practices with inmates, which indicates the bitterness of the feelings of his opponents against him. The case against him never came to trial but was dismissed by the court because of the character of the evidence on which the indictment was based. He was reinstated as warden, but the situation was unsuitable for reforms, and he soon resigned.

Meanwhile his fame had spread to foreign countries and he lectured to crowded audiences in England and Scotland. He had not merely formulated a new idea but he had tried it out, and European penologists were interested to hear of his work. In 1917 he was made head of the Portsmouth Naval Prison and the war spirit enabled him to introduce his reforms under the most promising conditions. His experience at Portsmouth was the happiest of his life.

After his retirement in June, 1920, he devoted a good deal of his time to speaking and writing in favor of reform in prison conditions. In 1922 he was instrumental in the organization of the National Society of Penal Information "to help in developing an intelligent, a sustained and a disinterested public opinion." Its name indicates its function—"the collection and distribution of information concerning criminal justice." The specific tasks of the society were to be the issuing of a bulletin of prison and penal affairs and the publishing of a handbook of American prisons, bringing together in one volume the information about penal institutions that promised to be most useful. Through its office it planned to collect as rapidly as possible a body of penal information available to anyone who cared to use it.

When Mr. Osborne discussed the organization of the society, he considered calling it "The Prison Handbook Society." This indicates how central a place the handbook had in his mind in connection with its work. Three handbooks have been issued by the society. Mr. Osborne's death in October, 1926, was made the occasion for the organization of a memorial to him, and also for the provision of means of carrying on his work for the improvement of prison conditions. An Osborne Memorial Fund has been established for the permanent endowment of prison reform.[1]

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[1] Chapman, Thomas Mott Osborne in *The Harvard Graduates' Magazine*, vol. XXXV, pp. 465–476, March, 1927; Lane, Thomas Mott Osborne in *The Nation*, vol. CXXIII, p. 478, Nov. 10, 1926; Addresses given at Memorial Meeting, Feb. 27, 1927, printed by The National Society of Penal Information. Mr. Chapman, his college classmate and life-long friend, regards the lectures given by Osborne, and afterwards published by the Yale University Press under the title "Society and Prisons,"

Like his predecessors in the socialization of imprisonment, Mr. Osborne will probably be known as a propagandist rather than as a scientific contributor to the technique of reforming criminals. It was his genius for personal relationships and his power of appeal to the hearts of prisoners that accounted chiefly for his success. To him self-government was a means of making criminals better; it was a way of preparing them for a return to society. His idea of self-government was the setting up of a miniature world in which relationship would be spontaneous and normal, and men would control their own lives with as much freedom as was possible in a prison.

Self-government grew out of Osborne's own personality and character. He was the "Happy Warrior" of Wordsworth's verses. He fared forth with high courage and devotion to destroy some of the wrongs of his day and he happened upon the evils of imprisonment as a method of dealing with crime. Self-government was not his only reform. He went after the grafters. He was the object of a campaign of abuse in which his personal character was assailed. Through it all he conducted himself so that his friends could say with truth "This is the Happy Warrior: this is He that every man in Arms should wish to be."

Review Questions

1. Explain what is meant by inmate self-government.
2. Compare self-government and the honor system.
3. Why is self-government by prisoners a contradiction in terms and a misleading description?
4. What would be a more correct description?
5. What was Osborne's real contribution?
6. Give an account of the history of self-government.
7. Describe the organization of the Mutual Welfare League.
8. In what three institutions were leagues established by Osborne?
9. Explain the way in which the league operated.
10. What did the league accomplish at Sing Sing?
11. Describe the results of the league.
12. What was the significance of Canada Blackie?
13. What are some weak points?
14. What is the sociology of self-government?
15. How does it prepare for life outside the prison?
16. Show how self-government undertakes to reorganize prison society along sociological principles.
17. Describe the growth of self-government down to the present time.
18. Why has not self-government developed more rapidly?
19. How did Osborne come to be a prison reformer?
20. Compare his experiences at Auburn and Sing Sing.
21. What were the specific tasks of the National Society of Penal Information as conceived by Mr. Osborne?
22. What will probably be Osborne's place as a prison reformer?

as his most characteristic written work. "This book is Osborne's self." These lectures "express both his specific intellectual contribution to the theory of prisons and his own personal endowment of force and genius."

Topics for Investigation

1. Study the early experiments with self-government. See Lewis, "The Development of American Prisons and Prison Customs," pp. 209–309.

2. Study the George Junior Republic as an experiment with self-government. See George, "The Junior Republic" and George and Stowe, "Citizens Made and Remade."

3. Study Osborne's own account of self-government in his books, "Society and Prisons" and "Prisons and Common Sense."

4. Describe Osborne's week in Auburn Prison. See Osborne, "Within Prison Walls."

5. Study an English view of Osborne's work. See Hobhouse and Brockway, "English Prisons To-day," pp. 671–686.

6. Study an American view of Osborne's work. See Tannenbaum, "Wall Shadows," Chap. II.

7. Consider the significance of Canada Blackie. See Field, "The Story of Canada Blackie," and Osborne, "Society and Prisons."

8. Can self-government succeed under an ordinary man or must there be an Osborne to make it go? See Hobhouse and Brockway, "English Prisons To-day," pp. 671–686.

9. Study the growth of self-government. See "Handbook of American Prisons," 1926 and 1929.

10. Consider the place of Osborne in the history of prison reform. See *The Nation*, p. 478, Nov. 10, 1926; Addresses at Memorial Meeting, Feb. 27, 1927, printed by The National Society of Penal Information, and Chapman in *The Harvard Graduates' Magazine*, pp. 465–476, March, 1927.

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1. SUTHERLAND: "Criminology," pp. 434–441, 495–496.
2. GILLIN: "Criminology and Penology," pp. 515–523.
3. WINES: "Punishment and Reformation," Chap. XIV.
4. STUTSMAN: "Curing the Criminal," Chaps. IX–XI.
5. TANNENBAUM: "Wall Shadows," Chap. II.
6. JAFFRAY: "The Prison and the Prisoner," Chap. V.
7. OSBORNE: "Within Prison Walls," Chaps. I, XIII–XIV.
8. OSBORNE: "Society and Prisons," Chaps. IV–V.
9. OSBORNE: "Prisons and Common Sense."
10. FIELD: "The Story of Canada Blackie."
11. "Handbook of American Prisons, 1926," and "Handbook of American Prisons and Reformatories, 1929."
12. HOBHOUSE and BROCKWAY: "English Prisons To-day," pp. 651–699.

CHAPTER XIII

PRISON LABOR

There is general agreement that prisoners should be put to work and that their work should be so organized and directed as to pay for their maintenance and, at the same time, to equip them with habits of industry and with the ability to earn an honest living after their release from prison.

Prison labor was originally intended to be punitive—it was imposed as additional to the punishment involved in imprisonment. Such methods as the shot drill, the treadwheel and crank were of this character. For nearly a century now the economic motive of reducing the cost of prison support and the social aim of affording industrial training to the inmates have been more prominent. A recent survey has disclosed the fact that in the case of a great number of men a sentence to prison "at hard labor" is actually a sentence to idleness with no benefit to anybody, either to the prisoner or to the taxpayer. In a few prisons the organization of industry is such as to make the institution nearly or quite self-supporting; in nearly all some part of the expense of maintenance is met by prison labor. There is not, however, a prison in the country in which both the aims of maintenance and of training are being met.

Prison Labor in England

The problem of prison labor has always been difficult. Even before imprisonment was used as a punishment, the idleness of persons in the jails, who were awaiting trial or who had been thrown into them for debt, was one of the causes of demoralization that led John Howard to undertake his reforms. Like other Evangelical philanthropists, believing in "grace," he was "determined to save men's souls by subjecting them to the discipline of continuous work, physical abstemiousness and religious exercises—a regimen to which he unhesitatingly subjected his family and himself." The same idleness which, in the eighteenth century, Howard regarded as a cause of demoralization is still widely evident in American county jails in the second quarter of the twentieth century.

From the time of Howard, the requirement of a certain amount of physical effort became an essential part of the English prison discipline. Persons responsible for the care of prisoners wanted to keep them employed to make discipline easy and to reduce the cost of prison maintenance. The prison workshop was, therefore, merely a device for employing one class of paupers and thus lightening the burden upon the taxpayers. All sorts of handicrafts were carried on in the prisons, some of them becoming regular factories and earning a profit, which paid a large proportion of the cost of maintenance of the prisoners. This transformation of the institutions into "busy scenes of cheerful industry" delighted the philanthropists, and secured the approval of Mrs. Fry down to her death.

Differences of opinion arose as to the merits of prison labor. Some of the administrators began to doubt whether the emphasis upon the maintenance of the institution harmonized with the motive of reformation. The burden upon officials and magistrates involved in the management of industries led to the introduction of "farmers" or contractors. Sometimes the jailer leased out the labor of the prisoners, and in other cases an outside employer would pay a lump sum for the sending in of materials for the prisoners to work up. Such arrangements destroyed prison discipline. "Clever artisans who could earn the most money, or were useful in instructing others in profitable trades, naturally became the favorites for prison indulgencies, irrespective of the crimes for which they had been committed; whilst it was the incorrigibly idle and destructive who were recommended for remission of sentences."

Another objection was urged that the main purpose of the treatment of criminals was that of deterring from future crime by supplying every person with a strong motive for resisting the temptation to break the laws. Under the system of employment, the prison became for many poor persons a comfortable place. The healthy environment, ample supply of food and regular employment compared favorably with their circumstances out of jail. It began to be said that the great increase of numbers committed to prisons was due to their positive attractiveness. Sydney Smith expressed the point of view of the "common sense" school of prison reformers. He would remove all useful labor and substitute only the treadwheel, or "some species of labor where the laborer could not see the results of his toil—where it is as monotonous, irksome and dull as possible—pulling and pushing, instead of reading and writing—no share in the profits—not a single shilling. There should be no tea and sugar, no assemblage of female felons round the washing-tub—nothing but beating hemp and pulling oakum and pounding bricks—no work but what was tedious, unusual and unfeminine."

Finally, the capitalist employers outside began to object. In 1821 a citizen of Birmingham wrote the Home Secretary that "a manufacturer of pins in this place employs the prisoners in the gaols of Warwick, Stafford and Northampton in the making of pins by means of which the distress of the poor of this place is greatly augmented, and poor rates considerably increased to the injury of numerous families and in direct contradiction to an Act of Parliament." Up to this time there seems not to have been objection on the part of free labor to the competition of prison labor.

As a result of these various objections, the treadwheel came to be widely used from 1818 to 1826 as a means of providing work. The progress of the Industrial Revolution also made hand labor unprofitable and was, consequently, another factor leading to the more general employment of the treadwheel and later of the crank. Furthermore, the treadwheel, crank and similar devices were regarded as more effective deterrents than productive labor. The monotony and lack of any material product of their labor caused the prisoners to hate this made work, and their dislike for it was, according to the ideas of the time, a sound reason for using it.

Various other proposals were made for the employment of prisoners in England during the nineteenth century, but it was not till 1894 and 1895 that a committee of inquiry recommended the abolition of the treadwheel, the crank and similar forms of penal labor and the use of productive labor, not for the sake of the reduction of the cost of maintenance but for the effect on the minds of the prisoners. An Act of Parliament in 1898 adopted the recommendations and finally abolished the treadwheel and crank from English prisons. As already pointed out in an earlier chapter, prison industries in England are unsatisfactory from almost every point of view. Since the end of the nineteenth century, prisoners have been employed only in the supply of government demands.[1]

Prison Labor in the United States

Within ten years from the time when the Auburn system was established, there developed in connection with it an unexpected and complicated problem. When Auburn Prison began to cease to be a financial burden to the state and its earnings were beginning to show a profit, the "mechanics" became "violently aroused" over the competition of convict labor with "free labor."

As early as 1831 the mechanics in New York City claimed that Sing Sing Prison was making contracts to sell marble at prices far below market prices. They stated that the prison was furnishing to a museum in New York marble for $500 that would cost from $7,000 to $8,000 in the open market.

Labor was becoming at Auburn and Sing Sing a source of profit to the state through the letting of the labor of prisoners to contractors. Other states were also making money from systematic prison labor. In New Hampshire from 1822 to 1826 the net proceeds, chiefly from stonecutting, had been $7,596. Massachusetts State Prison announced a profit of $9,151 in 1825 and $8,819 in 1826. Such reports contrasted with the annual expense of the Walnut Street Prison of about $30,000 and with the continuous deficit of the State Prison in New York City that had, since 1797, cost a total of $1,237,343. Old Newgate in Connecticut had cost, since 1791, more than $200,000, but, within six months of the establishment of the new state prison at Wethersfield in 1827, the net earnings of ninety-seven convicts were $1,017 over all expenses of management and support. Captain Lynds said in the same year that, when Sing Sing was completed, he would enter into a bond for $100,000 to release the state from all further charges for current expenses on condition of receiving the proceeds of the labor of the convicts.

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[1] Webb, "English Prisons under Local Government," pp. 32–33, 83–89, 96–100, Longmans, Green and Co. 1922; Gillin, "Criminology and Penology," pp. 428–431. The Century Company, 1926.

It was against such financial arguments that, early in the thirties, the mechanics who were affected by the specific industries of the prisons began to protest. They were the forerunners of organized labor, and their arguments were that "convict labor lowered prices, created an oversupply in some industries, established unfair competition and crowded out free labor into other occupations." They also urged that convicts were taught trades to the prejudice of the free mechanics by developing apprentices out of the criminal classes, and that the contractors enjoyed unusual opportunities for profits.

In 1834 petitions were received by the legislature from groups of mechanics in sixteen counties, stating that the labor of the convicts was being sold at reduced prices to the contractors and was affecting injuriously the mechanical industries of the state. A legislative committee considered these petitions, and reported that the Auburn system had become the model of the world and no change ought to be hazarded. The mechanics reiterated their objections, and emphasized them by upwards of 200,000 signatures to their memorials of protest. The crux of the problem was then, as now, the question of finding some proper and satisfactory employment for the convicts.

So strong was the pressure that in 1835 the legislature passed a law that promised some relief to the mechanics. No mechanical trade was to be taught convicts except for the making of articles chiefly imported from abroad; no contract for a longer period than six months should be made by the warden, without the consent of the prison inspectors—due public notice was to be given—and no contract was to be made for more than five years; in industries supplied chiefly by domestic labor the number of convicts to be employed should be limited to the number *who had learned a trade before coming to the prison* (in practice became a useful "joker" for the prison authorities).

For several years, from 1835 to 1840, there was a lull in the controversy and the new law was apparently given a chance to work. In 1840 there was a vigorous revival of the mechanics' campaign. A legislative committee in 1841 again considered the problem. It opposed the arguments of the opposition and praised the conditions in the prisons. In

1842 an assemblyman, who had favored the demands of the mechanics, was made chairman of the committee on prisons. The report of this committee strongly condemned the contract system, the "silent system," and urged that the prison was a place for punishment and should be supported by a general tax instead of competing with honest workmen. When it came to constructive substitutes for the existing conditions, the committee made relatively moderate recommendations. Convicts should be employed so far as practicable in the manufacture of articles necessary for their own consumption and for the inmates of the state lunatic asylum. This is an early suggestion of what has come to be known as the "state-use" system.

Another noteworthy point in the report was the disparagement of the prison as a reformative agent, and the suggestion that the chief field of reformation was in society itself. It urged better living conditions, the square deal for labor and steady employment.

Out of the agitation of the mechanics there came a restriction of prison labor by the passage of a law providing that convicts should work in prison at *trades already learned by them and not at new trades.* Within a year the annual earnings of Auburn Prison had fallen from $57,722 to $49,652. The prison was earning $1,000 a month less than in the previous year. Unless existing contracts were legalized, an appropriation of $25,000 would have to be asked for to carry out the law of 1842, which annulled any contracts made in violation of the law of 1835.

The problem of prison labor in the United States arose in the prisons conducted on the Auburn plan. In fact, one great reason for the success of that system was because of the possibility of the more profitable employment of prisoners in association in shops than in their cells, as in the Pennsylvania system. The development of the Industrial Revolution and the consequent use of machinery only added to the advantages of the Auburn plan, while it practically made impossible any profitable employment of prisoners under the solitary system. The problem of prison labor arose in New York in the thirties of the nineteenth century and the controversy over it has continued to the present. The objections of "the mechanics" have been voiced by organized labor ever since. Their opposition explains the present system of prison labor in the United States.[1]

SYSTEMS OF PRISON LABOR

Prison labor systems fall into two principal groups: (1) those in which the commodities produced are sold upon the open market; and (2) those in which the commodities are consumed by institutions owned by the state. They may be either public or private in regard to three items: (*a*) the maintenance and discipline of the prisoners, (*b*) the control of the employment, and (*c*) the control of the sale of the products. Control of any one of these by a private individual constitutes a private system. The *lease* system gives control to a private individual over all three; the *contract* system gives such control over employment and sale of products; and the *piece-price* system gives a private individual control over the sale of the products. The lease, contract and piece-price systems are, consequently, known as "private systems." The public retains control of all three of the items in the public account, state use, states use and public works and ways systems. The public systems differ only in the extent of the market. The *public-account* system is entirely unrestricted; the *state-use* system is restricted to the institutions of the state in which the goods are produced; the *states-use* system is restricted to the institutions of the state in which the articles are produced and the institutions of other states; and the *public works and ways* is restricted to the state and, in addition, to the construction of public buildings and roads.

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[1] LEWIS, "The Development of American Prisons and Prison Customs, 1776–1845," Chap. XII, The Prison Association of New York, 1922; GILLIN, "Criminology and Penology," pp. 432–434, The Century Company, 1926.

The contract system, or the contract-labor system, and the piece-price system differ only in that under the former the contractor pays for labor at a given rate per day, while under the latter he pays on a piece-price basis—so much per piece for the commodities produced. The piece-price system is the contract system under a different name and in a somewhat preferable form. It has been a convenient method to soften some of the public opposition to prison-labor contracts. The abolition of the so-called "contract system" has sometimes meant the abolition of *contract labor* and the substitution of the *piece-price contract.* The states-use system is still little more than a plan and is only an extension of the state-use system. There remain only the lease, the contract, public account and state use as really distinct or independent plans now or recently in use.

		Main-tenance discipline	Employ-ment	Sale of products	Competition with outside	
1.	Lease	private individual			yes	direct
2.	Contract	state	private	private	yes	
	Piece price	state	state	private	yes	
3.	Public accounts	state	state	state	yes	
4.	State use	state	state	state	no	indirect
	States use	state	state	state	no	
	Public works and ways	state	state	state	no	

Direct—price competition
Indirect—quantity competition } Sutherland, 459.

This chart was made by a class at the University of Kansas under the direction of Prof. Stuart A. Queen.

The lease system represents the extreme limit of control by private individuals. Under it the government turns over its convicts to a certain party, known as the "lessee," who agrees to house, clothe, feed and guard them. The lessee also pays to the state an agreed upon amount of money for each prisoner received. In return he obtains the right to work the prisoners and the right to all the products of their labor. The system was the outgrowth of the Civil War in the South. General Ruger, who was in charge of the Georgia government during reconstruction, made the first convict lease. The penitentiary had been burned by General Sherman, and the lack of adequate state revenue made leasing seem an easy way out. In the first lease $2,500 was paid for 100 convicts for a year. In 1869 Governor Bullock leased 500 convicts to a firm of contractors. The legislature in 1871 authorized this lease and in 1876 ordered a twenty-year lease of convicts. In 1897 to 1898 the convicts numbered 2,000 and the price paid was $100 each a year. The same year the legislature established a state farm where juvenile offenders, women, the aged, sick and feeble minded were confined. The lease system continued in Georgia until 1909.

There were always protests against the lease system, particularly after the plan became completely commercialized and private gain or public revenue only were considered. Any adequate inspection or supervision by the state was almost impossible. Tales of cruelty and neglect have been reported from the prison camps, and shocking conditions have been discovered in them. The situation has been complicated by the large number of Negro convicts. As a state system it has been abolished, but county prisoners are still leased in a number of the southern states. Gradually, state farms have been developed and the South has become a pioneer in this mode of penal treatment in the United States.

The contract system has three forms designated as *per diem*, *piece price* and *cut-make-and-trim*. As already explained, the difference between the first two is merely in the method of payment—so much per day for labor or so much per piece or quantity. Under the cut-make-and-trim form, which has been applied to shirts and overalls, the contractor supplies the cloth, already cut, and the prisoners sew it into finished garments, the state supplying buttons and thread. The labor is paid on a piece-work basis.

The contract system was actually used in Massachusetts in 1807, but did not get well started until the twenties. The merchant capitalist appeared at the time, seeking cheap labor, and he supplied the element lacking up to that period. From the twenties the contract system was the principal method of employing prison labor for fifty years, when agitation began against it. Consequently, it has been steadily declining for many years.

The public-account system was used generally in the early state prisons from about 1800 to 1825. It failed because of lack of capital or equipment, lack of transportation facilities, small demand for prison-made goods and the introduction of machinery in outside industries. The appearance of the merchant capitalists in the twenties resulted in the substitution of the contract system. It was resumed in the eighties as a substitute for contract labor. In Minnesota and Wisconsin the manufacture of binder twine for harvesting machinery has been a great success. In Minnesota the making of farm machinery has proved successful. It began to produce binding twine in 1891, added farm machinery in 1907 and has used the public account system exclusively since 1909. During the first seven years the prison suffered a net loss but has made profits every year since, except in 1921. It has accumulated a revolving fund which now amounts to about $4,000,000. The Minnesota prison is one of the few self-supporting penal institutions in the country.

The state-use system sells its products exclusively to the state, county and municipal institutions. The public works and ways is merely a modified form of state use. It consists of the employment of prisoners in the construction of roads, buildings and other public works under the direct supervision of the state. The states use is so far little more than a plan worked out during the World War and has made almost no progress since that time.

The state-use systems avoid the objections of free labor and of manufacturers outside because the goods are not offered on the open market in competition with the products of free enterprise. Actually there is, ultimately, competition—quantity instead of price—*for whatever products are made in prisons cannot be made by free labor.* It does do away with the so-called "unfair competition" with free labor which is the essential objection of manufacturers and laborers to the contract system. The difficulty with state use is that the articles produced are not up to the standard required, and institutions, consequently, prefer to purchase when possible on the open market. Under state use also it is almost impossible to employ all the prisoners. In New York, under the system, less than one-half the prisoners are employed, and those at work averaged less than six hours a day or less than thirty-four hours a week. The demoralizing effect of idleness and insufficient work cannot be too strongly and too frequently emphasized.

The public-works-and-ways system was used in the early days of the Walnut Street prison in Philadelphia, but was given up because of the bad effects resulting from having prisoners upon the streets. Recently, it has been employed in a number of states, the most successful experiments being in Colorado and California in the building of roads. Conditions are favorable because the work is done away from centers of population, the men are carefully selected and are honor men, and the guards act as supervisors of the groups of prisoners. This system is suitable for application to only a limited number of convicts.[1]

COMPARATIVE USE OF PRISON LABOR SYSTEMS

In 1905 the contract system outranked any of the other systems. Under it was produced 49 per cent of all goods made by convicts. In 1923 it had declined to 26 per cent. There has been a definite shift toward the public-account and state-use systems in recent years. The following table shows the change that has taken place in the relative importance of the several systems since 1885:

PER CENT OF CONVICTS EMPLOYED UNDER SYSTEMS

	1885	1895	1905	1914	1923
Lease	26	19	9	4	..
Contract	40	34	36	26	12
Piece price	8	14	8	6	7
Public account	..	..	21	31	26
State use	26	33	18	22	36
Public works and ways	..	..	8	11	19
Per cent of all convicts employed at productive labor	75	72	65	..	61

A comparison between the value of goods produced under the different systems in 1905 and 1923 is shown in the following table:

	1905	1923
Contract	$16,642,234	$18,249,350
Piece price	3,239,450	12,340,986
Public account	4,748,749	16,421,878
State use	3,665,121	13,753,201
Public works and ways	2,886,887	15,331,545
Total	31,182,441	76,096,960

In 1905, $24,630,433 of goods were sold in the open market, while $6,552,008 were used in institutions or represented productive labor employed on public works and ways. In 1923 the figures were $47,012,214 and $29,084,746, respectively. In 1905, 80 per cent of the goods entered into the general competitive market and in 1923, 62 per cent.

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[1] GILLIN, "Criminology and Penology, pp. 434–439, The Century Company, 1926; SUTHERLAND, "Criminology," pp. 447–453, J. B. Lippincott Company, 1924; ROBINSON, "Penology in the United States," pp. 155–169, The John C. Winston Co., 1921; HENDERSON, "Penal and Reformatory Institutions," pp. 70–72, The Russell Sage Foundation, 1910; CASS, A General Statement of the Prison Labor Problem, a paper read at the National Crime Commission Conference held in Washington in November, 1927, and reprinted from the *Eighty-third Annual Revort of the Prison Association of New York*, 1928.

A survey of prison labor made in 1923 shows that, of 84,761 convicts, 79,350 were in state prisons and 5,411 in federal prisons. The survey covered 104 institutions. Of these 51,799, or 61 per cent, were employed at productive labor. The following table indicates their distribution under the different systems:

		Per cent
Contract	6,083	12
Piece price	3,577	7
Public account	13,526	26
State use	18,850	36
Public works and ways	9,763	19

These figures do not include 25,127, or 30 per cent, engaged in domestic prison duties such as cooking, washing, cleaning and other kinds of work necessary for prison maintenance. The sick averaged 2,602, or 3 per cent, and the idle 5,233, or 6 per cent.

The survey shows that $11,337,989 worth of goods, produced under the state-use system, were used in institutions in 1923. The value of goods sold on the market and the system under which they were produced was as follows:

Public account	$14,179,800
Piece price	12,381,254
Contract	18,265,608

Amounts paid to institutions for hire of convicts were $3,290,777. The articles for which the largest sums were paid for wages indicate the chief articles produced under the contract systems. The industries and the amounts paid are given in the following table:

Coal mining	$933,288	
Shirts, work	792,540	
Pants, work	381,605	
Hosiery and underwear	203,065	
Shoemaking	213,857	State institutions only
Furniture	120,999	
Aprons	118,063	
Stoves	89,198	
Lumber	87,848	
Brooms and brushes	81,618	
Harness	69,565	
Children's play suits	61,229	
Hollow ware	54,615	

The average number of convicts employed in various industries is given in the following table:

Farm, garden, dairy, livestock	11,824	
Shirts, work	3,411	
Furniture	3,129	
Coal mining	1,965	
Shoemaking	1,898	State institution only
Pants, work	1,505	
Textiles	1,448	
Quarrying and rock crushing	1,392	
Twine and rope	1,375	
Linens, making and mending	1,164	
Hosiery and underwear	1,036	

The last two tables show the largest number of prisoners employed in farming, gardening, dairying and the care of livestock. The next largest number of prisoners is employed in the making of clothing—7,509 are employed and the amount of wages paid for the hire of convicts was $1,363,229 in 1923. Out of a total of 39,321 convicts in state institutions 19,373, or nearly 50 per cent, were employed in these two industries. The making of clothing in various forms has been probably the principal industry in which the contract systems have been used.

Under the state-use system the principal articles produced are:

Farm, garden, dairy, livestock products	$3,484,736
Clothing	1,264,561
Auto tags	1,117,903
Textiles	2,375,138

Under public-account, piece-price and contract systems the principal articles produced are:[1]

Shirts	$12,340,230
Binder twine and rope	5,585,036
Shoes	4,961,470
Coal	3,860,616
Pants	3,344,206
Farm and garden products, etc	2,312,332
Overalls, etc	1,820,032
Brooms	1,743,552
Reed chairs	1,412,466
Children's play suits	1,149,030
Hosiery	1,063,159
Aprons, bungalow	854,970

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[1] Convict Labor in 1923, U. S. Bureau of Labor Statistics, *Bulletin* 372, Washington, 1925. This is the fifth survey made by the bureau. The prior reports were made in 1885, 1896, 1905, and 1914. They are to be found in the *Second Annual Report of the Commissioner of Labor; Bulletin* 5 *of the Department of Labor; Twentieth Annual Report of the Commissioner of Labor;* and *Senate Document* 494, *Sixty-third Congress, Second Session.* See Gillin, "Criminology and Penology," pp. 439–441 for a suggestive discussion of the extent and productivity of the various systems of prison labor.

Prison Labor Problems

The gist of the prison labor problem is summed up in the comments of "Smoky":

> What I can't get through my nut is why two thousand able-bodied men cost the State $100 a year a piece. If we had a little town of our own outside we'd have our families and children, an' good food an' decent clothes, an' theatres an' fire department and everything else, an' we'd all be comfortable, an' some of us would have money in th' bank' an' we'd send our kids t' school, an' all that. By workin' ev'ry day we'd support five 'r six thousand people besides ourselves, an' yet in here, livin' like dogs in kennels, an' eating th' cheapest grub they can get, it costs th' State a quarter of a million dollars a year t' keep us. There's somethin' rotten somewhere. If they'll let us guys work an' pay us f'r it, an' make us pay f'r what we got, y'r'd see a big difference. Y'r wouldn't see men comin' back, an' y'r'd see lots of 'em go out and take their proper place in th' world.[1]

Another prison inmate has expressed himself in more formal language than "Smoky" upon the same subject. He points out that "the whole prison system is based at present on certain ideas of what constitutes prison discipline rather than on real production in prison industries." In the second place, men are assigned to work as they come into the prison with little regard for their previous training. There is a lot of unskilled labor among the prisoners, but many skilled mechanics conceal their ability as they are unwilling to give the state skilled labor for a few cents a day. The system of supervision does not make for efficiency in production. The foremen are political appointees; efficiency and competency are lesser requirements; many of them could not hold such a job for twenty-four hours in a paying industry. There is appalling waste of material and most of the machinery is hopelessly obsolete.

> We have a prison population of skilled and unskilled labor—with no particular motive for work except the fear of punishment. They are given poor material, little adequate instruction, poor machinery and the whole management seems to them inefficient and indifferent. Until the men are given a better motive for work in the form of some compensation, and until radical changes are made in the machinery, raw material and general management, prison industries cannot be expected to be a paying proposition.[2]

The control over prisons in this country is decentralized. There are the prisons under the federal government, forty-eight state penal systems, two hundred municipal penal departments, and over three thousand jails with state supervision in only a small proportion of the states. It is, of course, impossible from a governmental point of view to have centralized systems as in England and France. Even within the separate states, there are limitations upon centralization.

[1] Lowrie, "My Life in Prison," pp. 287–288, Mitchell Kennerly, 1912.

[2] *Bulletin* 3 *of the National Society of Penal Information*, pp. 15–17.

Again, the management of penal institutions in more than half of the states is joined with that of the charitable institutions. The term "welfare" is used to cover the combined penal and charitable departments.

In the purchase of supplies over forty states have a centralized purchasing system. All the larger cities have central purchasing offices. It is estimated that $700,000,000 is spent annually by the states and the larger cities for supplies, of which sixty per cent is for welfare departments.

The cost of operation of these institutions is reduced by the work performed by the inmates. It is impossible to estimate the value of this work, which includes the labor employed in maintenance, repair and reclamation work, and farm products and supplies made by the institutions for their own consumption. It is unnecessary to try to ascertain the value of this labor because the public regards the amount for which it is taxed as the cost of maintaining the institutions.

All attempts to develop an adequate prison-labor system have been handicapped by the difficulty of installing productive labor making products, marketable in a manner not inconsistent with the best interests of industries outside the institutions.

According to Sutherland, an appraisal of systems of prison labor must be based upon the consideration of the following points: the immediate welfare of the prisoners, training and reformation of prisoners, financial returns to the state, ease of efficient administration, and competition with free labor. The consideration that has in the past been most important in determining the type of prison labor is competition with free industry. The key to the efficiency of prison labor is to be found in the solution of this problem. It takes two forms: (1) the attitude of organized labor to prison labor, and (2) that of manufacturers and business interests in regard to prison industries. There is ground for the belief that organized labor would not, as a policy, continue its opposition to prison labor, if prisoners were given an adequate wage and the goods were fairly priced and marketed. The opposition of the commercial interests seems to be a much more difficult problem for settlement.

Competition with free labor has drawn more attention and criticism than any other phase of the prison-labor problem. It is difficult to conceive of any work that does not compete with some one. The attempt to shift competition merely takes it from one man or business to another. Most of the opposition based upon competition is directed toward the contract, piece-price and public-account systems. If these three systems are discontinued, what substitute can be developed to take their places? Apparently there is no satisfactory substitute. In New York State, for more than a half century, the state-use system has existed, and yet there remains to be had a demonstration of its success. There is in

New York a potential state-use market estimated to range from $1,000,000 to $40,000,000 annually, and yet the value of goods sold to institutions has never amounted to more than about $1,900,000. Suppose that the potential market is $20,000,000 annually. This would mean that approximately $18,000,000 of that market is now supplied through free labor. If prison labor takes care of the entire market, free labor will be deprived of a substantial market. If the same thing were extended to other states, there would result an enormous reduction in the market now open to free labor. The only alternative would be the entire elimination of prison labor. Such a situation would not be tolerated by public opinion. There would be a condition of affairs in state prisons similar to that to be found in so many of our county and municipal penal institutions. A certain amount of objectionable exploitation for private gain would be replaced by a no less objectionable demoralization resulting from idleness. There would be simply the substitution of one evil for another evil, and perhaps the new evil would be the worse of the two.

The opponents of prison labor have suggested that our institutions be made places of education for industrial occupations. Training would be emphasized, the products would be fewer, and there would be less competition. Theoretically, this proposal sounds very plausible. But industrial education, or the teaching of trades, has its difficulties, as has been shown by the experience of the state reformatories. What trades should be taught to enable prisoners to find a place in industry dominated as it is by automatic machinery and mass production? Again, we cannot proceed upon the theory that all those who go to state institutions are capable of learning a trade. In any case, some effort toward the development of the habit of industry is desirable among those who go to prison, and who so frequently lack that virtue.

The solution of the prison-labor problem depends upon a more intelligent understanding by the public. The opposition is made up of persons who wish to eliminate prison labor from the particular trade or business in which they are interested without regard for the problem as a whole. What is to be done afterward does not interest them and is left to the administrators and others to determine.

In California a number of bills were introduced into the legislature to authorize the manufacture of auto license plates in one of the prisons. This bill has been defeated a number of times and the state is obliged to buy the plates instead of making them, at a great saving, in one of the penal institutions where a great amount of idleness exists. The utilization of unused labor power is prevented by a few interested parties to the loss of individuals and of the taxpayers.

In Arizona a survey of deposits near the prison indicated that the state could set up a cement plant and produce cement for the state road building at a great saving. The opposition of cement interests prevented the building of the plant. When the bill was presented to the legislature, the cement industries announced their intention to create a great cement factory at Phoenix, but when the prison bill was defeated nothing more was heard of the proposal.

When New York put into its constitution the limitation of prison-made goods to the state, county and municipal institutions, the legislature passed a bill preventing any printing in the prisons except for "the State Prison Department, the State Commission of Prisons and the annual report of state charitable and penal institutions." This law is still in force and the printing industry remains undeveloped in New York, while several other states have prison printing plants that are not only giving valuable training to prisoners but also are doing a considerable amount of state printing at a minimum cost.

These illustrations could be multiplied indefinitely. They make clear the kind of influence exerted by business interests against promising efforts to reduce public expenditures, because the particular proposal threatens to reduce profits or destroy a lucrative local monopoly. In many parts of the country these business interests are much more powerful than organized labor, and they are neither more intelligent nor scrupulous in their opposition. Their existence is, consequently, a greater obstacle to any satisfactory solution of the prison-labor problem.

In any attempt to solve the prison-labor problem, there must be a more reasonable attitude on the part of all concerned. Any group insisting upon the satisfaction of all its demands will be more of an obstacle than a help. There is need of considering the problem as a public problem and not the problem of one person or a few. Every citizen and every taxpayer is affected and should be interested. No solution can be accepted which works an injustice or does harm to the majority of the citizens of the country. Friendly, intelligent and unselfish effort must be used to get interested groups to come together, with a view to reaching an agreement by means of which existing unfairness of any sort can be eliminated or reduced to a minimum. If state use is to be the solution, then the business men, as well as others, should lend their assistance to give that system every chance of success.

Prison contract labor appears likely to decrease in the future. In the majority of the larger states it has already disappeared, and in several of these where it still prevails it is generally believed that it must soon end. In some states the officials are trying to develop other prison industries before legislation makes the change imperative. There seems to be less justification for its continuance in the larger states than in the smaller and the more sparsely populated states, where the problem of finding productive work for the prisoners is most difficult. It is significant that in some of the states still on the contract basis, the officials admit frankly the objections to the system, but continue its use because it seems at present the only feasible thing to do. Only a very few of the larger states still using it try to defend it.

The state-use system, which sells goods only to the state or its political units or to public institutions, and the state-account system, which allows all of the goods or the surplus after state institutions are supplied to be sold in the open market, seem to be two very distinct systems. As a matter of fact in many states there is a combination of the two. The chief states following exclusively the state-use system are New York, New Jersey, Pennsylvania, Ohio and Washington. The states using a combination of the state-use and state-account systems, or the latter exclusively, are Massachusetts, Indiana, Illinois, Minnesota, Michigan, North Dakota, South Dakota, Kansas and Oregon. Wisconsin, Nebraska, Indiana and Maine have the state-account system with some contract labor.

There is no question that the prisons using a combination of state-use and state-account or exclusively the state-account, have the most effective industries and the best industrial organization. The prisons on the state-account plan, with one or two exceptions, are not only giving employment to a much larger percentage of their population than those states on the state-use basis, but their industries are better organized as to buying the raw product and manufacturing and selling it. In several state-account prisons most, and in some cases all, of the costs of maintaining the institution are covered by the industries; they have also gone farther in the payment of a wage to prisoners and maintain this wage on a better basis than other prisons.

Of the states adhering strictly to the state-use method there is not one state in which the industries as a whole are comparable in their effectiveness to the industries in the state-account prisons. Under the state-use system the number of unemployed or semi-idle prisoners is much greater and the wage, when there is any, is small and paid to only a part of the prisoners. It is rather significant that not even one state using this method has so far developed an effective industrial organization which gives adequate employment to most of the prison population, pays the men a real wage, and covers most or all of the cost of running the prison.

Some of the reasons for this failure are not difficult to find. One warden stated: "We have been manufacturing goods in this prison for a great many years without finding out whether it was the kind of product wanted by other institutions or seeing what we could manufacture for them at a price advantageous to the state. We have followed the policy of making products easy for us to make and have trusted to luck to dispose of them."

Another reason why this system has not worked is found in the fact that most states have no efficient selling organization to distribute the goods; weak as their manufacturing organization is, their selling has been still weaker. In some states the law compelling the various units to buy goods from the prison is ignored or evaded.

A reason generally given and almost as generally accepted in states under this system for the ineffectiveness of prison industries is the inefficiency of prison labor. Yet in a number of states a very good degree of industrial efficiency has been achieved, and there is no reason for believing that those states with the state-use system have inmates who are industrially any less inefficient than may be found in states using the other system. It seems clear, therefore, that the weaknesses of the industries under the state-use system are primarily those of management, or those inherent in the system itself, rather than the inefficiency of prison labor.[1]

There is no reason why, with an intelligent and business-like administration of the prison labor conditions in our institutions, they should "not only become self-supporting but also include, in the services they render, many facilities impossible under the present system." The reformation of the prisoner will supersede the existing repressive discipline. The physical and mental defects of the prisoners, and their correction wherever possible, will be made necessary by the demands of the penal industrial system. The taxpayer will not support a regime which appropriates generously for the work of rehabilitation. He will regard it as unnecessary "coddling of criminals." Given half a chance, an efficient penal industrial system will meet the demand that prisons be self-supporting, while many facilities will be added because they can be supplied from the proceeds of prison industries, efficiently administered. The gains from self-supporting prisons would be derived from the saving of the cost of maintenance of the prisoners now largely paid from public taxes in many states, the saving to charitable institutions of the cost of caring for many of the prisoners' dependents during imprisonment, and the turning out of many competent workmen from the prisons in the place of confirmed criminals. Self-supporting prisons would solve many prison problems, now apparently insoluble, and would certainly go a long way in the direction of a settlement of prison-labor difficulties.[2]

Wages for Prisoners

One of the chief reasons for the inefficiency of prison labor is due to the fact that it is forced labor, and, therefore, the worker has no real incentive to exert himself to accomplish results. In reality, the prisoner is a slave and his labor is slave labor. The thirteenth amendment to the Constitution of the United States declares that "neither slavery nor involuntary servitude, *except as a punishment for crime, whereof the party shall have been duly convicted*, shall exist within the United States, or any place subject to their jurisdiction." Slave labor was notoriously inefficient so long as it continued in the South, and its unprofitableness was used as a reason for its abolition by the opponents of slavery. There is no way by which forced or slave labor can be made more effective, except by removing compulsion as the main motive and substituting some positive incentive in its place. You can lead the horse to water, but you cannot make him drink.

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[1] "Handbook of American Prisons, 1926," pp. 18–20.

[2] Whitin, Self-supporting Prisons, in the *Journal of Criminal Law and Criminology*, vol. XV, pp. 323–328, August, 1924. Discussions of prison labor problems are to be found in Gillin, "Criminology and Penology," pp. 450–471; Sutherland, "Criminology, pp. 452–463; and Cass, "A General Statement of the Prison Labor Problem."

In 1926, the American Prison Association recorded itself as follows:

> While it is realized that prisoners owe the state the products of their labor, it is nevertheless clear, that better and more production can be secured, lessons of thrift, perseverance, and self-reliance more readily taught and the public better protected through the training for citizenship of the prisoners, if a wage system properly safeguarded be installed in the prisons.[1]

The United States Bureau of Labor found that in 53 out of the 104 institutions in 1923 that reported upon convict labor, no compensation was received, while in 51 institutions some sort of payment was made.

Convicts in 31 institutions were paid 10 cents or less per day. In 7 institutions, convicts were paid over 10 cents and under 20 cents per day, while in 11 institutions they received 20 cents and over per day. In one institution prisoners received the free labor wage rate after the completion of a task and in one a bonus was paid for overtask work. Certain institutions reported some prisoners paid as follows: 20 to 50 cents, 25 to 50 cents, 25 to 70 cents, 25 to 80 cents, and 25 cents to $1.50 a day. Higher compensations are sometimes paid for overtask work.

To some extent compensation is a matter of incentive to the convict toward good work and better behavior, but a more important question is the condition of the prisoner's family. A convict with a conscience wants to care for his family, and a convict without a conscience should be compelled to care for his family. Some states require a part of the wages to be sent to the convict's family. Twenty states in their Mother's Pension laws provide for the payment of pensions when the husband and father is in prison. On the whole, it is apparent from these reports, made in 1923, that existing provisions for the payment of wages to prisoners are entirely inadequate from the standpoints of incentive and of the support of a family.

The Massachusetts Civic League in 1925 and 1926 supported a bill for the payment of wages to prisoners. It sent a questionnaire in December, 1924, to the warden of every state prison and received a reply from every state. The answers indicate the experience of different states.

California "has paid prisoners for work on state roads since August, 1923. It pays a wage of $2.10 a day. The 1,300 men employed paid for the entire cost of their maintenance, including guards and transportation and saved for themselves $50,000. Of this sum, $10,000 was allotted to dependents. Of the 700 men discharged or paroled, only seven failed to make good. The results have been entirely satisfactory."

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[1] "The American Prison Association, 1926," p. 341. A general discussion of prison industries will be found pp. 146-165.

The National Society of Penal Information, in its survey of American prisons in 1926, found "the best system of pay in the road camps of California . . . The net wage is only about 75 cents, but the practice has proved effective in reducing costs, giving prisoners real training in handling personal expenditures, and in building up self-respect."[1]

Minnesota has paid its prisoners wages since 1906. "The Stillwater prison is more than self-supporting. For the two-year period ending June, 1924, the amount paid for the support of the institution was $742,839, while the inmates had for themselves $141,349. Of this amount $21,445 was paid to dependents."

In addition to a system of wage payments in the state prison which has been in successful operation for ten years, "Vermont has tried an unique experiment in the county jail at Montpelier under Sheriff Frank Tracy. Employment is found with neighboring farmers or other employers, the prisoners working for regular wages according to their capacity. They take their dinner pails in the morning and return to the jail at night. The sheriff collects their wages. Of the 3,500 men who have been given this chance, only eight have tried to escape. They have paid for their maintenance; for clothing $15,000; to their families $20,000."

The arguments for the bill in Massachusetts to pay wages to prisoners were stated as follows:

1. It will lower the cost of maintaining the prison *by increasing production.* Twenty-nine of the states that have tried payment report increased production, sometimes double the former output.

2. It will reduce the cost of the taxpayer *by having the prisoners' earnings take the place of the gratuities they now receive.* The state now gives about $11,000 annually to men on their release, besides entertainments, educational opportunities, tobacco and reading matter. The state is paying wages to prisoners, but in such an illogical way that the most unambitious laborer receives as much as the conscientious one.

3. It will decrease the burden upon charitable societies *by relieving to a degree the needs of dependents.*

4. It will reduce the problem of discipline *by placing a reward on industry instead of a premium on idleness.*

5. It will bring about a more equal relation between prisoners *by giving the poor man a chance to buy extras which a man with some means can now obtain.*

6. It will benefit the prisoner *by giving him an opportunity to learn habits of thrift and industry; by encouraging self-reliance by giving him responsibility* for helping his dependents—in some cases for making resti-

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[1] "Handbook of American Prisons, 1926," p. 23, G. P. Putnam's, Sons, 1926.

tution; and *by insuring that he shall not be turned out at the end of his term without any means of support.*[1]

PRISON LABOR IN IOWA

The experience of Iowa with prison labor is typical of that of middle western states. In 1912 a committee, of which the attorney-general was chairman, appointed to investigate the general management of the prison at Fort Madison recommended the abolition of contract labor.

In 1915 the general assembly adopted the recommendation and provided that "inmates of the penitentiary and of the reformatory shall be employed only on state account and for state use and on any public works . . . excepting such employment as pertains to existing contracts or exclusively for the benefit of the state . . . The board of control is to establish such industries as it may deem advisable . . . but no service shall be rendered by any such inmates for any person, firm or corporation at a less wage than is paid free labor for a like service or its equivalent."

Contract work for private companies ceased May 1, 1918, by the termination of the last contract. In 1921 piece-price contracts were made with the Sterling Company of Chicago for the manufacture of aprons and house dresses at Anamosa, and with the Reliance Company of the same city for the manufacture of men's shirts at Fort Madison. The companies furnished the machines and materials, and the state provided the buildings and labor. Inspectors were also supplied by the company. A fixed sum per dozen was paid for the garments and the prisoners were paid. The contracts were approved by the attorney-general.

Late in December, 1923, the *Cedar Rapids Gazette* called public attention to the fact that, of the 960 men confined at Anamosa, more than 400 were engaged in making aprons and dresses for the Sterling Company. It raised the question as to whether such work was reformatory in character as required by the law, which provides that the "employment shall be conducive to the teachings of useful trades and callings so far as practicable, and the intellectual and moral development of the inmates." In addition, it pointed out that the presence of the company's inspectors placed the prisoners at the mercy of these representatives of the contractor, should they become arbitrary in determining the quality and quantity of work to be done by individuals. The inspectors were constantly watching the prisoners, walking up and down behind their machines, examining the garments, on the lookout for flaws, sending garments back to the workers who had made mistakes. A word from them to the prison guard might mean punishment for the prisoner who made a slip. An instance was cited of a convict who rebelled against the criticism of an inspector, whom he knocked down with his fist and attacked with a chair and a pair of scissors. The convict went to solitary confinement for many days.

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[1] Massachusetts Civic League pamphlets, 1925, Boston. Discussions of wages for prisoners are to be found in Sutherland, "Criminology," pp. 465–470; Gillin, "Criminology and Penology," pp. 459–471; Robinson, "Penology in the United States, Chap. IX.

As a result of the criticism aroused by the Cedar Rapids newspaper, the board of control cancelled the contracts at Anamosa and Fort Madison to take effect July 1, 1924. The chairman of the board declared that labor organizations maintained that the contracts were selling prison labor at less than free labor was receiving for the same work. The board wanted to keep within the law and, consequently, cancelled the contracts.

Later, new contracts were made and approved by joint resolution of the two houses of the legislature to extend to July 1, 1927. The general assembly also passed an act regulating the employment of prisoners after July 1, 1927.

According to the new legislation prisoners at Anamosa and Fort Madison were to be employed "only on state account, in the maintenance of the institutions, in the erection, repair or operation of buildings and works used in connection with the institutions, and in such industries as may be established and maintained in connection therewith by the board of control."

Considerable criticism was directed at the board of control because of its delay in making preparation for the establishment of the state-use plan in 1927. Labor organizations urged the need of more rapid progress, while objections were made to the few steps actually taken by the board.

The repeal of the state-use system in the session of the general assembly in 1927 seemed possible. The existing situation was quite satisfactory from a purely fiscal point of view. During the preceding year prison industries paid into the state treasury approximately $300,000 and the wages received by the prisoners amounted to about $100,000. In its biennial report for the period ending June 30, 1924, the board called attention to the fact that "all capital expenditures and operating expenses have been paid from receipts earned by the various industries as no new appropriations were made."

Discussion in the 1927 legislative session resulted in the extension of the piece-price contracts for two years, from July 1, 1927, to July 1, 1929. The board of control recommended their indefinite extension—in effect, the repeal of the state-use law of 1924. The labor organizations opposed such action. The extension for two years was a compromise.

The Board of Control of State Institutions in its biennial report for the period ending June 30, 1928, surveyed the changes in prison labor and prison industries from July 1, 1918, to July 1, 1928, covering developments from the time when contract labor ceased to the present time.

July 1, 1918, there were in operation at the penal institutions ten small industries employing 342 prisoners; July 1, 1928, the number of industries in operation totaled sixteen (nine large and seven small) employing 1,246 prisoners. The state has invested in industries—machinery, buildings and other equipment—the sum of $1,102,669.43 as compared with an investment of $403,896.65 in 1918.

July 1, 1918, the prison population was 1,079; July 1, 1928, the population numbered 2,301, making an increase in ten years of 1,222.

The receipts from the prison industries for the year ending July 1, 1918, were $259,240.78, the amount of wages paid to prisoners working in the industries during that year was $17,940, and the profit to the state for that year totaled $41,808.37. For the year ending July 1, 1928, the figures were: receipts, $867,967.49, the amount of wages paid $121,342.35, and the profits totaled $212,399.47. The combined wages and profits amounted to $333,741.82. During the ten-year period the industries were developed to their present condition without any financial assistance from the legislature in the way of special appropriations, involving an expenditure of $1,095,179.60 for buildings, machinery and raw materials for manufacturing the articles produced. In addition, $223,137.80 was paid from profits earned by the industries for the purchase of land at one of the insane hospitals and for support and special purposes at the penal institutions.

Every able-bodied prisoner is employed at some useful occupation, except those sick in the hospital and those confined in the department for the insane.

Three systems of prison labor are in use: state or public account, piece-price contract for output and state use. The furniture factory at the state penitentiary is operated under the public-account system. For some years the furniture was sold in carload lots to numerous jobbers, but at the present time it is sold to one firm on a merchandise sales contract. The state owns the plant and there are 281 prisoners employed. The shirt factory at the state penitentiary is operated under the piece-price system, one firm taking the output and furnishing the machinery. The average number of men employed is 269. The apron factory at the men's reformatory is operated under a similar contract. The number employed is 398. The three industries, furniture, shirts and aprons combined, employ 948 men.

Operating under the state-use system there are thirteen industries manufacturing goods for use in the state institutions and county homes:

Men's Reformatory:
  Tailoring and garment industry.
  Soap factory.
  Cheese factory.
  Woodworking industry.

- Shoe industry.
- Printing and binding industry.
- Auto license plate and road sign factory.
- Sheet-metal, tin and aluminum industry.

State Penitentiary:

- Shoe industry.
- Tailor shop.
- Brush and broom factory.
- Knitting industry.

Women's Reformatory:

- Sewing industry, manufacturing clothing for women and girls.

Operating under *part state use* at the men's reformatory is a stone quarry, producing agricultural limestone for state institutions and for sale to owners of land in the vicinity of the institution; also producing a quantity of crushed stone for road work.

At the state penitentiary is a stone quarry similar to the one at the men's reformatory and turning out the same products.

In state-use and part state-use industries, 270 prisoners are employed. In addition, 165 prisoners are employed on the different institutional farms and 57 in the various state parks.

The balance of the prisoners are employed in other work around the institutions, such as operating power plants, cooking, serving meals, caring for the sick in hospitals and in the general care of the institutions. Stated in tabular form we have the following distribution:

Public account	281
Piece price	667
State use	492
Maintenance	873

In the opinion of the members of the board of control, the state-use plan of employment has been extended to about the limit. With the exception of a mattress factory, and a knitting plant to make underwear that would, at best, employ only 40 to 50 more men, the field of state use has been covered. All of the state-use industries, except the printing plant, could be enlarged, provided the surplus goods could be sold under the state-account plan, but this would necessitate employing a sales force.

While the state-use law in Iowa provides that cities, counties and towns, and departments, commissions and boards shall purchase such products from the board of control, there is no machinery for enforcing the law. Some are buying the products, others are not.

In 1929 the legislature passed a measure "to eliminate the expiration date of prison contracts," which had been advanced to July 1, 1929, by the preceding legislature. Amendments to extend the date to July 1, 1931, requiring payment of a minimum daily wage of $2 to prisoners employed in the manufacture of shirts and aprons, and for a minimum daily wage of $1.50 were defeated in the Senate by votes of 15 to 32, 16 to 31 and 17 to 28, respectively. This action ended the fourth consecutive fight over prison labor in the legislative sessions of the last eight years.

The state federation of labor has led the fight against the contract system and in favor of the state-use plan. Their claim is that the governor and the board of control are "in the clutches of prison labor contractors." Bitterness has been added to the controversy by the fact that one of the members of the board of control was formerly president of the state federation of labor, and his defense of the board's position in opposition to his former labor colleagues is regarded as desertion.

The National Society of Penal Information, which makes a survey of penal institutions every three years, visited the Iowa institutions early in 1928 and expressed its approval of the chief industries, and of the general conditions under which the prisoners are employed at the reformatory and penitentiary.

The prison labor situation in Iowa is suggestive of conditions in a large proportion of the states. It shows the concrete problems and how they have been worked out in a state which is typical of the states in the great middle region of the country. The controversy over the contract system has been waged more or less constantly for a decade. The substitution of the state-use system seems to have been carried about as far as is practicable, given the existing conditions in the state. Organized labor is still militantly against any kind of contract system. Politics enters more or less directly into the controversy. There is no expert administration in the state, and the prisons, as large business enterprises combined with correctional work for human beings, must follow an opportunist policy, making the best of conditions that cannot be suddenly changed. The growth in prison population and industries during the last ten years emphasizes the need of non-partisan expert administration in Iowa and other states similarly situated.[1]

Review Questions

1. What are the reasons for prison labor?
2. What is the actual status of prison labor?
3. Describe the development of prison labor in England.
4. Describe the beginnings of prison labor in the United States.

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[1] *Report of the Cosson Committee*, Department of Justice, Des Moines, Iowa, May 25, 1912; *Sixteenth Biennial Report of the Board of Control of State Institutions*, Des Moines, Iowa, 1928; STRIEF, Iowa Prison Industries, *The Des Moines Register*, Sept. 6, 1927, reprinted from *Welfare Magazine*, published by the Department of Public Welfare of Illinois; MARSHALL in *The Evening Gazette*, Cedar Rapids, Iowa, Dec. 29, 1923 Jan. 2, 4, 1924; *The Iowa Unionist*, Des Moines. June 29, 1928; *The Des Moines Register*, Jan. 24, 27, Feb. 2, 8, 14, 16, 22, 1929.

5. Why did the problem of prison labor in the United States arise in prisons conducted on the Auburn plan?
6. Into what two groups do prison labor systems fall?
7. Explain the difference between the public and private systems.
8. Name and define the three private systems.
9. Name and define the four public systems.
10. What four systems are really distinct or independent?
11. State briefly the history and the comparative merits of these four systems.
12. Explain the difference between quantity and price competition.
13. What changes have taken place in the comparative use of prison labor systems?
14. What are the chief articles produced?
15. In what occupations are the largest number of prisoners employed?
16. What is the significance of the comments by "Smoky"?
17. Why are not prison industries profitable?
18. What are the difficulties in the way of making prisons self-supporting?
19. How much is spent annually by states and cities for the purchase of supplies?
20. Upon what considerations must an appraisal of systems of prison labor be based?
21. Can competition between prison and free labor be entirely avoided?
22. What has been the experience of the state of New York for more than half a century?
23. What are the objections to the entire elimination of prison labor?
24. Upon whom does the solution of the prison labor problem depend?
25. Give some illustrations of the influence exerted by business interests.
26. What systems of prison labor seem to result in the most effective industries and the best industrial organization?
27. What has been the experience of states using the state-use plan?
28. How can the demand for self-supporting prisons be reconciled with the reformation of prisoners?
29. What would be the gains from self-supporting prisons?
30. What sound reasons are there for the payment of wages to prisoners?
31. Give some examples of the payment of wages to prisoners.
32. Describe the development of prison labor in Iowa since 1912.
33. What objections were made to the policy followed after 1921?
34. What legislation was passed in 1924, 1927 and 1929?
35. What is the present status of prison labor in Iowa?

Topics for Investigation

1. Describe the states-use plan of prison labor developed during the World War and immediately after the Armistice. See *The Survey*, pp. 69–71, Oct. 15, 1923.
2. Study the *Report of the Cosson Committee in Iowa*, 1912.
3. Study the industrial system at the Minnesota state prison. See "The Handbook of American Prisons."
4. Study the industrial system at the Wisconsin state prison. See the "Handbook of American Prisons."
5. Describe the work of the National Committee on Prisons and Prison Labor. See reports and pamphlets issued by committee, New York City.
6. Study the *Report on Convict Labor* in 1923 in the miscellaneous series published by the U. S. Bureau of Labor Statistics.
7. Study "our convict slaves" as described in *The Atlantic Monthly*, pp. 591–603, May, 1926.

8. Discuss the problem of providing incentive for prison labor. See the *Journal of Criminal Law and Criminology*, pp. 603–621, February, 1927.

9. Study the county convict road work in North Carolina. See Steiner and Brown, "The North Carolina Chain Gang."

10. Study wage payments to prisoners. See the *Journal of Criminal Law and Criminology*, pp. 558–591, February, 1920; pp. 96–106, May, 1920; pp. 222–271, August, 1920.

11. Study convict labor policies. See the *Journal of Criminal Law and Criminology*, pp. 530–597, February, 1925, and pp. 218–268, August, 1927.

12. Study recent legislation on prison labor by Congress and in Massachusetts. See the Hawes-Cooper Act passed in February, 1929, and pamphlets published by Massachusetts Civic League, Boston.

Selected References

1. SUTHERLAND: "Criminology," Chap. XIX.
2. GILLIN: "Criminology and Penology," Chaps. XX–XXI.
3. ROBINSON: "Penology in the United States," Chaps. VIII–IX.
4. BARNES: "The Repression of Crime," Chap. VII.
5. STUTSMAN: "Curing the Criminal," Chap. VII.
6. JAFFRAY: "The Prison and the Prisoner," Chaps. VII, IX.
7. COSSON: *Report of Committee*, Department of Justice, Iowa, 1912.
8. LEWIS: "The Development of American Prisons and Prison Customs," Chap. XII.
9. HENDERSON: "Penal and Reformatory Institutions," Chap. X.
10. MOHLER: Convict Labor Policies in the *Journal of Criminal Law and Criminology*, vol. XV, pp. 530–597, February, 1925.
11. Convict Labor in 1923 in *Bulletin* 372 *of the Bureau of Labor Statistics*, miscellaneous series, January, 1925.
12. Prison Labor in the "Annals of the American Academy of Political and Social Sciences," vol. XLVI, March, 1913.

CHAPTER XIV

PAROLE AND RELEASE FROM PRISON

Parole is the feature of the reformatory system that has been most widely copied by other penal institutions and has become a factor in the routine of prison administration. In 1920 forty-five states had passed such laws and there is now no state that does not use parole in the release of prisoners from state prisons and penitentiaries. Some states, however, make extensive use of it, while others do not use it very generally.

There are a number of more or less similar methods of release before the expiration of a sentence which should be differentiated from parole: (1) *good time laws* by which a man's good conduct reduces his sentence a certain amount of time per year, and usually increasing from year to year; (2) *commutation of sentence* which is a reduction by action of the governor or president in view of new evidence or new conditions not considered at the time of trial; and (3) the *use* of the *general pardoning power* to effect immediate release. Parole is also frequently confused with probation—so-called "bench parole" is probation.

Parole involves the following principles: Opportunity for self-improvement in penal institutions, and consequent release depending upon progress made, and supervision after release, partly to determine whether the person lives up to the required conditions, and partly to help him to meet the requirements.

Earlier parole laws were limited to special classes, but the tendency at present is to apply them to all classes of prisoners. Experience with parole has resulted in the recognition that no prisoner ought to be set free with a suit of clothes and a five dollar bill. Whether a hopeful prospect for reformation or a hardened offender, the released prisoner needs some supervision and assistance if there is to be any probability of his "going straight." Only by individual treatment can the possibility of reform be determined.

Parole is not the same thing as pardon. Prisoners who are unconditionally pardoned receive the official forgiveness of the state and leave its institutions without further obligation. Prisoners who are paroled are not forgiven and may be returned to prison for misbehavior subsequent to liberation. Parole is not the same thing as commutation of sentence under allowance for "good time." Under "good time" laws prisoners receive an early release as an automatic reward for obeying the rules of the prison. They are then absolutely free. Under the operation of the parole system any or all prisoners may be held to serve their maximum terms and those who may be released earlier are subject to reincarceration. Parole is not the same thing as probation. Convicts are released by courts upon probation *before* they have been imprisoned. The term "parole" is accurately applied only to those who are released *subsequent* to a period of confinement.[1]

The two methods of indeterminate sentence and release on parole are generally combined in practice, although they may be, and have sometimes been, used separately. Their combination is essential for the greatest efficiency of either system, and they are theoretically connected as parts of one general reformatory scheme of penal treatment.

Properly speaking, "parole" means the release of a person, sentenced and imprisoned for crime, for the balance of the term of his sentence, conditional on his observing requirements. In Europe this is known as "conditional liberation" and used to be called in England "ticket of leave." The release of a convicted person before sentence, or under "suspended sentence," conditioned on the performance of certain requirements during a certain period of time is, properly speaking, called "probation." In England this is termed "conditional release" and on the Continent "conditional sentence."[2]

One of the methods devised to rectify miscarriages of justice is the use of the pardoning power. Ordinarily it is exercised by an executive and its origin long antedates the development of the prison system. The pardoning power seems to have grown out of the conflict between the king and the nobles who threatened his authority. Its growth, therefore, was incidental to the development of the kingly power. The Norman Conquest introduced into England the view that the pardoning power was the prerogative of the king, although it was not until the time of Henry VIII that complete authority to grant pardons was vested in the crown. The doctrine of the separation of the powers of government rests upon the historical evolution of those powers with the result that the pardoning power is generally assumed to be in the hands of the executive, governor or president, unless the constitution or legislation determines otherwise.

The pardoning system has been subjected to severe criticism and its complete abolition has been demanded. It has been charged that the governor does not have time to determine whether pardons should be granted; he is sometimes influenced by trivial resons, and, as an elective official, he is susceptible to pressure by political and business interests. Under present conditions many pardons are justified. Because of errors of courts, or changes in legislation, or changes in the popular ideas

[1] *The Report of the Pennsylvania State Parole Commission*, 1927, Part I, p. 10.

[2] Lindsey, Historical Sketch of the Indeterminate Sentence and Parole System in the *Journal of Criminal Law and Criminology*, vol. XVI, p. 9, May, 1925.

of the times, some method of modifying court action must be available. Only by pardons or commutations can such modifications be made. The pardon cannot be dispensed with until our machinery of justice is much more free from abuses. The pardoning power is and ought to be exercised rarely, but its value consists in providing a method by which mistakes can be adjusted when necessity does arise.

The History of Parole

Good time laws are based upon the principle that rewards may sometimes be of more effect than punishments. One of the first applications of this idea to prison management took the form of reduction of sentence as a reward for good behavior. The idea was first put into statutory shape in New York in 1817, when the prison inspectors were given power to release, when he had served three-fourths of his sentence, "any convict sentenced to imprisonment for not less than five years, provided he could produce a certificate from the principal keeper, showing that his behavior had been good, and that from his net earnings there had been set aside and invested for his personal account not less than fifteen dollars per annum." There is no evidence that this law was ever used.

In 1836 an act was passed in Tennessee making it the duty of the governor, "in case the conduct of any prisoner had been unexceptionable for a whole month," to reduce the term of imprisonment of such prisoner, "not to exceed two days for each and every month he should so conduct himself." In 1856 a statute in Ohio provided for a deduction of five days in each month during which any prisoner "shall not be guilty of a violation of any of the rules of the prison and shall labor with diligence and fidelity." These earlier acts seem to have been entirely independent of each other, but after the passage of the Ohio law similar ones were enacted as follows: in 1857, Iowa and Massachusetts; in 1860, New York and Connecticut; in 1863, Illinois; in 1864, Oregon and California; in 1865, Missouri and Nevada; in 1866, Maine; in 1867, New Hampshire, Minnesota, Kansas and Alabama; in 1868, New Jersey, Vermont and Rhode Island.

Another application of the principle was made by Montesinos in Spain, when he was appointed governor of the prison at Valencia in 1835. He introduced a military organization with prisoners acting as inferior officers. The prisoners were taught trades and did all the work of the prison. A school was conducted, open to all, but compulsory only to boys under twenty. By good behavior a convict could reduce his term by one-third. Obermaier applied similar ideas with success at the Kaiserslautern Prison in Bavaria in 1830, and later at Munich.

As early as 1790 Commodore Phillip, as Governor of New South Wales, was given the right of conditional pardon. In course of time a system of release was worked out for the convicts transported to Australia. By good conduct the convict rose, from what was called a probation gang—in which he was placed on his arrival, and in which he was employed in various kinds of public work, worked in chains and was housed in barracks—to a conditional liberation on ticket of leave, when he might hire himself out to a free settler. The discovery of the adaptability of Australia to sheep husbandry attracted large numbers of settlers and gave an opportunity for employment to released convicts. The ticket of leave was followed in time by a complete pardon. The ticket of leave was an Australian invention.

Captain Alexander Maconochie put his mark system into operation at Norfolk Island in 1840. A certain number of marks, depending upon the character of the offense, was charged up to every convict, which he must redeem by good conduct before receiving a ticket of leave. Sir Walter Crofton borrowed the mark system from Maconochie, and added a period of comparative freedom in what was called "an intermediate prison," before the convict was entitled to his ticket of leave.

"Thus the ticket-of-leave or conditional liberation, which was the forerunner of the modern parole systems, arose out of experience in the care and handling of convicts and was developed by men in charge of prisoners as a practical method of dealing with them. Its origin was in practical experience rather than in theoretical reasoning and it became established because it produced results in prison discipline more favorable than had ever been secured without it."

The origin of the indeterminate sentence, on the other hand, was from theoretical considerations. Archbishop Whately declared in a letter to Earl Grey in 1832 that it seemed entirely reasonable to him that convicted criminals "should not be turned loose upon society again until they give some indication that they are prepared to live without a repetition of their offenses." Frederick Hill in 1839, and his brother Matthew Davenport Hill in 1846, expressed similar ideas about the release of prisoners before they had given any evidence of reformation.

In 1846 M. Bonneville de Marsangy, royal solicitor at Versailles, delivered an address on "preparatory liberation," in which he argued that the prison administration should have "the right upon previous judgment of the judicial authority to admit to provisional liberty, after a sufficient period of expiation and on certain conditions, the convict who has been completely reformed, reserving the right to return him to prison on the least well-founded complaint." In 1847, he more fully set forth his views in a work, which was distributed by the government as in the case of a public document. Another work in two volumes was published by Marsangy in 1864, in which he discussed conditional liberation, which he described as "nothing more nor less than the extension to adult convicts of a principle applied with much success to juvenile offenders."

A translation of Marsangy's 1846 address was printed by Dr. E. C. Wines in the New York Prison Association Report for 1866. In the association report for 1864, Dr. Wines had already described the work of Maconochie in Australia and of Crofton in Ireland. In 1866, G. B. Hubbell, who was then warden of Sing Sing prison, visited Ireland for the purpose of investigating the working of the Crofton system. As a result of his observations, he recommended its introduction into New York. The New York Prison Association was at that time studying the prisons of the state and preparing a plan for the revision of the prison system. Out of their efforts developed the Elmira Reformatory, which was authorized by law in 1869. Among other features of the reformatory system, parole was included. It was regarded at the time as a great invention, but it was clear that it had existed for a considerable time in Europe, and in its essential form of release based upon good conduct it had also a history in the United States. As a recognized method in the American correctional system, its use began at Elmira Reformatory.

GROWTH OF PAROLE AND THE INDETERMINATE SENTENCE

Up to 1900 reformatories for young male first offenders with the indeterminate sentence and parole had been established in the states of New York, Massachusetts, Pennsylvania, Minnesota, Illinois, New Jersey, Kansas, Ohio, Indiana, Colorado and Wisconsin. The indeterminate sentence for persons setenced to the state prison had been adopted by the states of Ohio, New York, Michigan, Minnesota, Massachusetts, Illinois and Indiana. All of these states had had experience with the indeterminate sentence in adult reformatories before applying it to the state prison, except Ohio and Indiana, where it was adopted for both types of institutions at the same time. The more usual form of the indeterminate sentence provided that the maximum period of detention should not exceed the maximum prescribed by law for the offense of which the prisoner was convicted. This is the form followed by the reformatories, and is patterned after the Elmira Act.

During the same period the parole system spread more widely than the indeterminate sentence. A number of states provided for the system of parole, but did not adopt the indeterminate sentence. A certain portion of the sentence, usually one-half, must be served before the prisoner was eligible for parole. These early laws also usually made parole applicable to first offenders only, and excepted those sentenced for some of the more serious crimes. Later acts removed most of these restrictions.

By 1900, the parole system had been adopted by twenty states. Eleven of these states had the indeterminate sentence. In some of the states, also, the governor, under the pardoning power, had introduced a system of granting conditional pardons, which provided a sort of parole for a limited number of offenders.

From 1900 to 1910 the following states passed acts providing for the indeterminate sentence and parole in their prisons: Colorado, Iowa, Kansas, Kentucky, New Hampshire, New Mexico, Pennsylvania, Washington, West Virginia, and Wyoming. Of these states, Colorado, Kansas and Pennsylvania had had the indeterminate sentence and parole in connection with their reformatories. Connecticut and Idaho, which already had parole, added the indeterminate sentence during this period. Arkansas, Georgia, Montana, Oklahoma, Nevada and South Dakota put into effect parole without the indeterminate sentence, and Congress provided parole for federal prisoners. California, Virginia and Wisconsin passed new parole acts, and New York and Michigan passed new laws providing for both parole and the indeterminate sentence. Thus, in 1910 thirty-two states and the federal government had parole in operation in some form and twenty-one states had some form of the indeterminate sentence.

In 1911 Arizona, Oregon and Texas passed acts providing for indeterminate sentence and parole for the first time. The same year Nebraska, New Jersey, North Dakota and South Dakota, which had parole, adopted the indeterminate sentence. Minnesota and Pennsylvania also passed new indeterminate sentence and parole laws in 1911.

In 1912 South Carolina authorized the governor "to suspend sentence or parole any prisoner upon such terms and conditions as he may deem just in the exercise of executive clemency." In practice applications for parole go to the board of pardons, which investigates and recommends action to the governor.

In 1913 Maine, Tennessee, Nevada and Utah provided for indeterminate sentence and parole for the first time. The same year California, already having parole, adopted the indeterminate sentence and Montana provided for a parole commissioner. In Ohio the indeterminate sentence was extended to include all sentences except treason and murder. In Missouri the legislature established a board of pardons and paroles, after Governor Hadley had begun paroling prisoners under the constitutional provision for granting "reprieves, commutations and pardons."

In 1914 Maryland provided for an advisory board of parole to assist the governor "as to granting a conditional pardon or parole to any prisoner in any of the penal institutions." Kentucky also passed a new indeterminate sentence act.

In 1915 Rhode Island adopted the parole system. Montana, which had established parole in 1907, added the indeterminate sentence, and New York created parole commissions in New York City, Buffalo and

Rochester. In 1916 Louisiana for the first time adopted the indeterminate sentence and parole.

In 1917 North Carolina passed its first indeterminate sentence and parole law; the territory of Hawaii provided the parole system for all prisoners convicted of felony except those sentenced for first-degree murder; California passed a new indeterminate sentence law; and Michigan, Minnesota, Montana and Oregon amended their parole and indeterminate sentence laws.

In 1919 Alabama, where parole had been in effect since 1897, added the indeterminate sentence; Georgia adopted the indeterminate sentence, having had parole since 1908; and new acts were passed by Illinois, Oregon, California, Maine, New York, New Jersey and Wisconsin, the legislation in the last two states related to parole only.

In 1920 Massachusetts passed a new indeterminate and parole act, and in 1921 Minnesota and Nebraska did the same. In 1922 New Jersey passed a new indeterminate sentence act.

In 1922 forty-four states, the territory of Hawaii and the federal government had the parole system in operation in some form, thirty-seven of these states had some type of indeterminate sentence, and only four states were without either the indeterminate sentence or parole.

Thirteen different forms of the indeterminate sentence were provided for in these laws. Twelve states patterned their legislation after that of Elmira, already described. Eleven states adopted the form that appeared first in Kansas in 1901, in which a maximum and minimum term was to be fixed by the court, and the sentence must be within the maximum and minimum terms prescribed by law for the offense of which the prisoner was convicted. Seven states followed the Indiana Act of 1897, in which the court named maximum and minimum periods, which were to be the maximum and minimum prescribed by law for the offense. Six states provided for a sentence indefinite in form but with both maximum and minimum periods of detention limited to the maximum and minimum prescribed by the law for the offense of which the prisoner was convicted. Four states required a maximum and minimum period to be fixed by the court but with the provision that the maximum was not to exceed the maximum prescribed by law for the offense. Of the remaining forms two were adopted by two states for each, and the six others were represented by only one state for each. The Elmira form and the one in which the maximum and minimum were to conform to the requirements of the state law for the particular offense for which the prisoner was convicted were the most generally adopted. A strictly indeterminate sentence has nowhere been established. While it is theoretically sound, public opinion is opposed to such an extreme form of putting the liberty of a prisoner in the hands of officials who might conceivably abuse it. Hence we have the maximum limit in all cases. There are also constitutional questions involved that would be accentuated by an entirely indeterminate sentence.[1]

Paroling Machinery and Regulations

There is great variation in regard to the paroling machinery. In some states it is placed with the governor or with the governor on the recommendation of a board. In other states it is treated as a measure of prison administration and given to the governing authorities of the penal institutions. Some states have established a separate board of parole or have added parole to the duties of existing boards such as the prison commissioners. The creation of a special board is undoubtedly the best method. The paroling function should be completely separated from prison administration, and its importance requires the entire time and attention of the persons to whom these duties are intrusted.

In many states the amount of work requires all the time of members. In New York in 1920, the board of parole was meeting about forty times a year and dealing with approximately fifteen hundred cases—an average of thirty-seven cases a meeting. The Prison Survey Commission declared in its report that if "a sufficient amount of time was given to each case the board would be meeting six times a week instead of forty times a year." A board of competent men selected solely for their fitness for the work, adequately compensated and giving their full time to their duties is essential for the paroling authority. As usually appointed by the governor, political preferences frequently, if not generally, influence the selection with the result that persons unfamiliar with criminal jurisprudence, and without experience or acquaintance with penal methods, serve on these boards. Political appointment reduces the efficiency of the work done by the boards, and weakens public confidence in the soundness of its judgment.

The duty of granting parole or of recommending parole to the governor is the only duty specified in the laws of fourteen states. In eighteen states the boards are directed to make rules and regulations governing their proceedings. Some of the statutes direct the paroling authority to make rules for the conduct or treatment of prisoners, before or after parole, or both, that will tend to reform them and prevent their return to crime. Nine states require the board to keep in touch with paroled persons and supervise their conduct on parole, and four other states provide for one or more parole officers to keep in touch with and visit paroled prisoners. Supervision is required in the laws of only thirteen states, although it is actually carried on in some states where it is not specified in the statutes. The importance of supervision is not sufficiently recognized and nowhere is there provision for an adequate number of parole officers. In New York in 1916 three parole officers had theoretically 1,029 prisoners under supervision and in 1918 four officers were supposed to supervise 1,181 persons on parole. "To expend a per capita per prisoner amounting to perhaps $175 to $200 a year while in the institution, where the prisoner can hardly go wrong, and then to expend a paltry couple of dollars per capita for the paroled inmate at a time when the released prisoner must fight the fight of his life not to go wrong again, is a condition that will some time be seen as intolerable as have come to appear the cells at Sing Sing prison."

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[1] Lindsey, Indeterminate Sentence and Parole System in the *Journal of Criminal Law and Criminology*, vol. XVI, pp. 10–15, 21, 30–40, 52–58, 64–69, 73, May, 1925; Cass, Digest of Indeterminate Sentence Laws and Parole Rules, reprinted from *Report of the Prison Association of New York*, 1927; Witmer, The History, Theory and Results of Parole, pp. 24–31, 36–42, 46, May, 1927.

The weakest part of the parole system is in supervision. A careful survey of this feature of parole brought out the fact that the sum spent on supervision annually varies from $1 to $6 per man and the ratio of parole officers to men in their charge varies from 1:40 to 1:800. Probably the small expenditure per man and the large number of paroled prisoners per officer are most typical of present conditions. Supervision throughout the country is a matter of obtaining a few reports.

Eligibility to parole, in general, results from serving a certain length of time in the institution—usually the minimum time prescribed by law for the sentence. This is the requirement in twenty states. The statutes of three states prescribe the minimum and add a record of good conduct. In five states the prisoner is eligible at any time in the discretion of the parole board and this is the usual rule in the reformatories. In New York a prisoner in a reformatory may be paroled at any time, but in the state prison he is not eligible until he has served one-half of the maximum term. Where prisoners under definite sentence may be paroled, they become eligible when they have served, generally one-half, sometimes one-third, of their sentences.

After eligibility has been attained, suitable employment must be obtained before parole is granted in fifteen states. In addition seven states require that the paroled prisoner shall have a good home free from criminal influences. In Iowa and Kentucky, if maintenance be assured, the requirement as to employment is dispensed with. In three states the parolee must have "a next friend and adviser." Good conduct is specified as a prerequisite in six states and by the federal law. A certain number of marks must have been earned in Louisiana and in some of the reformatories. Twelve states try to establish some standard of reformation, but the language is vague. Some of the statements are: "reasonable probability that the prisoner will not again violate the law"; "is likely to lead an orderly life"; "can be released without danger to society"; "and has shown a disposition to reform." Fifteen states make no requirements of this kind.

Twenty-six states authorize the parole authority to make rules prescribing the conditions of parole. Six states require reports at stated intervals as the only condition. The laws of seven states and the United States do not define the conditions in any way. South Dakota and North Carolina make somewhat detailed requirements as to the time of reports, conduct and associations to be observed. In Louisiana the paroled prisoner must "keep the peace and be of good behavior."

The laws are very vague in regard to violations of parole. Twenty-six states and the United States do not define or specify. Six states declare that violation of the rules or conditions fixed by the parole authority shall constitute a violation; five states use the phrase "lapsing into criminal ways," and one state uses the phrase "falling among criminal companions." Aside from the commission of another offense, there should be no specific requirements in the law. The regulations made by the parole authority can be interpreted or suspended to meet the circumstances in each case. Minute specifications, such as requiring attendance at church, forbidding the use of cigarettes, or naming an hour to be in at night, should not be too rigidly enforced. Violation of parole is primarily a matter of human behavior and individuals must be thought of as persons and not as machines.

Where a definite sentence has been imposed, final discharge cannot be given until the expiration of the term of the sentence. In sixteen of the states and under federal laws, there can be no final discharge before the expiration of the longest term named in the sentence. Twenty-four states provide for final discharge earlier, but the provisions are extremely varied. In some states the prisoner must be on parole for a certain time before a final discharge can be granted—usually the time fixed is six months or a year. Probably a year is none too long a period to set as a minimum time for parole, although, unless adequate supervision is provided, the prisoner does not greatly benefit by being required to report at regular intervals. Much more careful supervision is a much needed development of the parole system.

There is little uniformity in the statutory requirements as to what records of each prisoner shall be kept. Some state laws have no provisions. Illinois has the most detailed requirements. The purpose of these provisions is, of course, to secure as much information as possible for guidance in institutional treatment and for determining parole. A marking system, not too rigidly and mechanically applied, may be a valuable aid in the granting of parole. Such systems have been more uniformly provided for in reformatories than in state prisons, and may partially account for the greater success of the indeterminate sentence and parole in reformatories than in the prisons.

Rules governing the granting of parole have been formulated in only sixteen states and rules for conduct under parole in only eight. In a few states the rules are quite detailed, but in others they are few and perfunctory. "Some regulate the procedure of the board, some establish criterions for granting parole, some add to the statutory requirements or supplement them; some specify definite requirements or prohibitions for the conduct of the prisoner on parole, others give the paroled man general and platitudinous advice, such as to be honest, obey the law, avoid evil associations. Some seem to be gotten up in a form for distribution to the paroled men and aimed solely at informing them of the requirements of the law. It is not too much to say that an adequate, sensible and well-planned set of rules has nowhere been worked out or adopted."[1]

RESULTS OF PAROLE

There have been many official statements and a few careful investigations of the results of parole, but none of them tells how many paroled men return to crime as compared with those who have served the regular prison sentence. There is no system by which we can trace prisoners after they are discharged from parole, and no means of knowing definitely whether they serve sentences in other states subsequently. For the same reason we do not know accurately the relative success or failure of the old prison system.

Many institutions publish results and some of them try to trace discharged prisoners. Most of the reports are optimistic, but their weak point lies in their definition of success—*as failure to be returned to prison during the parole period.* Such a definition gives us little valuable information as to the permanent results of parole. What happens after discharge from parole is the important thing to know.

The following statistics show the amount of success claimed:

State	Period covered	Percentage making good
Massachusetts	1911 to 1912	97
Texas	1911	97
Canada	1899 to 1913	94
Connecticut	1911 to 1912	91
Wisconsin	1907 to 1912	91
California	1893 to 1913	85.52
Illinois	1895 to 1912	84.3
Colorado	1914	80
Nebraska	1914	80
New York	1913	79
Washington	1914	78
Michigan	1911 to 1912	76.7
Indiana	1912	74
Minnesota	1912	74
Pennsylvania	1910 to 1914	73

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[1] LINDSEY, Indeterminate Sentence and Parole System in the *Journal of Criminal Law and Criminology*, vol. XVI, pp. 78–89, May, 1925; WITMER, The History, Theory and Results of Parole in the *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 47–61, May, 1927; ROBINSON, "Penology in the United States," pp. 222–241, John C. Winston Co., 1921.

Massachusetts and Texas show the best records, while Indiana, Minnesota and Pennsylvania have the worst. Some figures are for periods of twenty, seventeen and fourteen years and many for only a single year. Massachusetts, Indiana and Minnesota are leaders in other lines of social work, and are all doing well in parole. These results indicate how unreliable such statistics are.

In 1920 E. R. Cass, secretary of the New York Prison Association, wrote every reformatory and prison for information on paroled prisoners and received replies from seventy institutions. Not one could give any information as to the after careers of their paroled prisoners. His conclusion was that "we shall never be able to determine with any degree of reasonable accuracy, the results of indeterminate sentence and parole until there is established a system whereby every penal institution in the country will be required to file with a central bureau duplicate copies of the records of its inmates."

There have been two attempts to ascertain the after status of paroled men. Elmira Reformatory made a study of 16,000 inmates who had been on parole. Only those who had received their final release and who had no previous criminal history that was known to the institution were counted as successful. No questionnaire was used in making the study and no country-wide inquiry was sent to penal institutions or other sources of information. The conclusion that sixty-seven per cent of those paroled were "making good" was based entirely on the records at the reformatory.

In 1912 the New York Prison Association, with the aid of the Russell Sage Foundation, made an extensive study of former Elmira inmates. The study was seriously handicapped by the impossibility of locating many of the released prisoners. Any similar study will meet the same obstacles.

As to the number who successfully complete their terms of parole there are reliable statistics covering considerable periods. In Indiana for a period of twenty-three years, 1897 to 1920, the percentage of unsatisfactory cases was 26.5, out of a total on parole of 13,864. In Minnesota the unsatisfactory cases for 1918 to 1920, out of a total of 2,304, amounted to 26 per cent. In California from 1893 to 1920, a total of 6,433 prisoners had been released on parole and 19.5 per cent had violated their paroles, but only 3.8 per cent had violated by committing new crimes. Over 80 per cent have made good. In Pennsylvania from 1900 to 1920, out of 5,919 released on parole, 849, or 14.36 per cent, violated their paroles. In Illinois, with a total number of 25,496 paroled from 1895 to 1918, the percentage of violations was 30.55 per cent for Joliet, 23.30 for Chester and 23.72 for Pontiac; for the biennium, 1918 to 1920, the number paroled was 1,819 and the percentages of violations for the three institutions were 19.10, 13.59 and 14.23, respectively.

These statistics give a general impression as to the results of parole so far as conclusions can be based on the conduct of the paroled man while actually on parole. The periods of parole are generally not long—six months or a year. Obviously, a man may go "straight" during parole and lapse into crime again as soon as he is finally released from making any reports and is not in imminent danger of being returned to prison. Going "straight" for six months or a year outside after serving time may give a man a chance to get on his feet again, but it is a rather frail basis for real reformation unless more supervision and assistance are given during parole than is usually the case. About all that can be said for parole, as administered at present, is that it does allow a considerable number of persons an opportunity for readjustment with a minimum of help during the process. Even at its worst, parole is a step in advance for there is some attempt on the part of the public authorities to assist the man as he leaves prison.

In general, prisoners discharged at the expiration of their sentences receive no supervision in most states. They are given a suit of clothes, a railroad ticket and a small sum of money. Some private organizations, such as the Society for the Friendless, the Central Howard Association, the Volunteers of America and the Salvation Army, devote themselves to the aid of ex-convicts.[1]

Factors in Success or Failure on Parole

In general, fitness for liberty (whatever that may mean) is accepted by parole boards in determining what prisoners shall be paroled. The Massachusetts Reformatory probably has as good a method of selection for parole as any institution. The parole board has information regarding the nature of the crime, prior criminal record, number of marks lost in prison for poor conduct, and the length of time already spent in the institution. All of this data is regularly used. In addition the board has access to a large amount of material that it rarely uses. Warner found in a study of 300 consecutive parole successes and 300 consecutive failures that there was no significant correlation between success on parole and any of these items, except prior criminal record, and that correlation was slight. "His conclusion was that the parole board had no information on which to base a decision regarding fitness for release, that it merely guessed, and was wrong about as many times as right."[2]

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[1] Witmer, The History, Theory and Result of Parole in the *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 61–64, May, 1927, Lindsey, Indeterminate Sentence and Parole System in the *Journal of Criminal Law and Criminology*, vol. XVI, pp. 89–94, May, 1925.

[2] Sutherland, "Criminology," pp. 531–532, J. B. Lippincott Company, 1924. Warner's conclusion has been questioned. See the *Journal of Criminal Law and Criminology*, vol. XIV, pp. 405–413, November, 1923.

In 1928 a committee, consisting of Dean Albert J. Harno of the Law School of the University of Illinois, Judge Andrew A. Bruce of the Law School of Northwestern University and Ernest W. Burgess of the University of Chicago, submitted a report on the Workings of the Indeterminate Sentence Law and of Parole in the State of Illinois. This report was made at the request of the chairman of the Parole Board of Illinois, and "in order to obtain an impartial consideration of the indeterminate sentence laws and of the parole administration and to avoid suggestion of prejudice or politics," agreement was made with the institutions named above, "to undertake an examination, analysis, and report on the entire record of the parole board for not less than six years." The members of the committee were selected by the presidents of the three institutions. Judge Bruce prepared the section of the report on the history and development of the parole system, Dean Harno the section on the workings of the parole board, and Professor Burgess the section on *factors determining success or failure on parole.*

The study of the factors in success or failure covered the records of 1,000 men paroled from the penitentiary at Joliet, of 1,000 men from the penitentiary at Menard, and of 1,000 men from the reformatory at Pontiac. At the time of the study all of the men had been released for at least two and one-half years, and, in a considerable proportion of cases, for as many as four or five years. The committee undertook to find out:

1. What specific facts about the man and his past history as stated in the record could be related to the fact that he had, or had not, violated parole?
2. What, if any, additional facts significant in the light of his record on parole might also be secured?

Success or failure on parole was compared with the following twenty-two facts as entered in the records: (1) nature of offense; (2) number of associates in committing offense for which convicted; (3) nationality of the inmate's father; (4) parental status, including broken homes; (5) marital status of the inmate; (6) type of criminal, as first offender, occasional offender, habitual offender, professional criminal; (7) social type, as ne'er-do-well, gangster, hobo; (8) county from which committed; (9) size of community; (10) type of neighborhood; (11) resident or transient in community when arrested; (12) statement of trial judge or prosecuting attorney with reference to recommendation for or against leniency; (13) whether or not commitment was upon acceptance of lesser plea; (14) nature and length of sentence imposed; (15) months of sentence actually served before parole; (16) previous criminal record; (17) previous work record; (18) punishment record in the institution; (19) age at time of parole; (20) mental age according to psychiatric examination; (21)

personality type according to psychiatric examination; and (22) psychiatric prognosis.

Public opinion inclines to the view that certain offenses are indicative of more vicious tendencies in the criminal and, therefore, forecast failure on parole. Murder and certain sex offenses arouse abhorrence and are punished most severely. The tabulation of offenses in relation to parole indicate that men convicted of sex offenses, murder, and manslaughter show a relatively low rate of violation of parole, while those convicted of fraud, forgery and burglary have unusually high rates of violation. It is clear that other factors than the type of crime have an influence upon success or failure under parole.

In a large proportion of cases the crime is not committed by one man but by two or more men. The significant finding from a consideration of the relation of parole violation to number of associates was the high violation rate where the offender had no associate, and the surprisingly low rate when there were three or more associates. The importance of the study of gang and other group relationships is suggested by these facts.

The violation rate is much lower for the first and occasional offender than for the habitual and professional criminal. Furthermore, the larger half of the first and occasional offenders are technical and minor violators, while a great majority of the violations of habitual and professional criminals are the result of detection in new offenses. Serious violation is five times as great among the last two types as among the other two types. The professional criminal observes the technicalities of parole much better than the first offender, but he is five times as liable to continue his criminal career.

The attempt was made to determine the social type into which each person would fall such as hobo, ne'er-do-well, mean citizen, drunkard, gangster, recent immigrant, farm boy and drug addict. This classification was drawn from the history of the man as contained in the records. No such classification appears on the records. Wide variations are manifested in the rate of parole violation by the different types. The farm boy and recent immigrant make satisfactory adjustments under parole, but the hobo, ne'er-do-well from the city and the older drug addict are liable to become parole violators. The gangster has a violation rate a little under that of the average.

No significant variation from the average in percentage of violation was discovered in the classification according to the size of the community, except a uniformly low rate for those whose homes were in the open country.

The parole defaulter rate was smaller than the average for actual residents of the community. The material in the records was not so satisfactory for determining the type of neighborhood, as criminal underworld, hobohemia, rooming house district, furnished apartments, immigrant area and residential district. The figures indicate that residence previous to commitment is an important factor in success or failure on parole.

Facts about the man's previous criminal history were obtained from various sources. Except for certain crimes, such as treason, murder, rape and kidnapping where the law provides a flat sentence, sentences are indeterminate and provide minimum and maximum periods of imprisonment. The striking conclusion from the figures is the low violation rate for flat sentences, and for the heavier penalties of three to twenty years and one year to life. These findings correspond to the discovery that murderers and sex offenders furnish only a small proportion of the parole violators. The longer the period served the higher the violation rate is another significant fact brought out in the study.

How far does a man's past record allow us to predict his future conduct? The past criminal history varied from slight offenses to the more serious types. Out of the 1,000 men at each institution, there was no report of a criminal history in 541 cases at Pontiac, 666 at Menard and 490 at Joliet. At both Menard and Joliet a previous reformatory and prison record show high rates of parole violation.

A very low percentage of parole violations for men with a record of regular employment emphasizes the value of regular habits of work as a factor in reformation.

The relation of the punishment record in prison to parole violation is a matter of vital importance in the theory and practice of penology. At both Joliet and Menard the men who were punished by solitary confinement had an unusually high violation rate, particularly when compared with the low rate of those without recorded punishments.

What is the relation of the age of the paroled man to his success or failure? The prison population is composed of young men. When paroled, the average age of the Joliet men was only 34.7 years, of Menard men only 33.9 years, and of Pontiac only 21.6 years. The ages ranged from seventeen to thirty-two years at Pontiac, from nineteen to eighty-six years at Menard, and from seventeen to eighty-one years at Joliet. The youngest and the oldest have the lowest violation rates, based upon a grouping of under twenty-one years, twenty-one to twenty-four, twenty-five to twenty-nine, thirty to thirty-nine, forty to forty-nine and fifty years and over. The youth who has impulsively become a criminal is more amenable to supervision than the criminal of twenty-five to thirty years, and the older man of forty and over is finally learning that "crime does not pay."

Illinois is the first state to establish the office of criminologist. Under his direction mental and psychiatric examinations are given of the inmates of the three institutions under consideration. A diagnostic summary of this examination with a statement of the probabilities of success or failure upon release comes to the parole board. "It was through the work of the state criminologist, Dr. Herman M. Adler, that the first conclusive demonstration was made that the proportion of those of inferior intelligence in the criminal group is no larger than in the general population." In fact the percentage of such individuals in Pontiac from Cook County was lower than the percentage of the same type from the county examined in army camps. It is, nevertheless, of interest to know how men of varying intelligence respond to parole conditions.

Statistics indicate that those of inferior intelligence are as likely, perhaps more likely, to observe parole rules than are those of average and superior intelligence. A study of parole cases, parole violators and prison population of the Illinois Penitentiary in 1921 showed that, while those of inferior intelligence constituted 28.6 per cent of the inmates of Joliet, they comprised only 15.6 per cent of those paroled and only 15.5 per cent of parole violators. Consequently, inferior mentality should no longer constitute an obstacle to the granting of parole.

There seems to be some evidence of a higher rate of parole violation in certain groups of higher intelligence. Dr. Adler found that repeaters had, on an average, a higher intelligence rating than first offenders.

Less emphasis is being given to inferior mentality as a cause of delinquency, but more attention is being paid to the study of the personality of the offender. The figures from Joliet, and to a lesser degree from Pontiac, seem to indicate that the man with egocentric personality pattern has the greatest difficulty in social readjustment, while the emotionally unstable seem to have the least trouble under parole supervision.

The psychiatric prognosis of the outcome on parole for Pontiac and Joliet gives highly satisfactory results:

Prognosis	Violation rate, per cent		
	Pontiac	Menard	Joliet
All persons	22.1	26.5	28.4
Favorable outcome	14.8	21.4	20.5
Doubtful outcome	17.6	28.1	51.4
Unfavorable outcome	30.5	33.8	49.2

The explanation of the poorer correlation of expectation and actual results at Menard is probably due to the fact that that institution has only the part-time services of a psychiatrist and that, consequently, the examinations are less thorough.

Professor Burgess points out that . . .

In the analysis of factors determining success and failure on parole some striking contrasts have been found. For example, although the violation rate for the 1,000 youths paroled from Pontiac is 22.1 per cent, it is less than half that among those with a regular work record prior to imprisonment (8.8 per cent); among the emotionally unstable (8.9 per cent); superior intelligence (9.5 per cent); where sentence served is less than one year (10.7 per cent); among boys from farms (11.0 per cent). It is double this average rate where the youth lived before arrest in the criminal underworld (42.3 per cent) or in a rooming house (45.8 per cent); if judge and prosecuting attorney protest against leniency (46.7 per cent); if he has served a sentence of five years or over (46.2 per cent); if he was brought up in an institution instead of a family (50.0 per cent); and if he is a professional criminal (52.4 per cent).

Evidently, it is entirely feasible to devise plans by which these factors may form the basis for an estimate of the probability of the success or failure of individuals on parole. These factors are considered in a common sense way by parole authorities, but they need to be taken more seriously, objectively and more accurately. A summary sheet for each man about to be paroled could be prepared showing the violation rate for each significant factor. Two cases, a boy of twenty, already a professional criminal, and a lad of seventeen, a first offender, checked up in this way, indicated that the chances are against the former making good on parole, while the latter would be a very good risk. "The prediction would not be absolute in any given case, but, according to the law of averages, would apply to any considerable number of cases."

A prediction rate of expectancy of success or failure on parole would have great practical value if it could be worked out. Hence the committee was interested in finding out "how the various factors might be combined so as to give more certainty of predictability than any factor taken separately."

Twenty-one factors were selected by which each man was graded, in comparison with the average for the 1,000 cases, upon the probabilities of making good or of failing upon parole. Since there were twenty-one factors it was theoretically possible for any man to be above the average on all the factors, or upon twenty or upon nineteen, and so on down the scale to three, two or upon no factor. Actually for Joliet several men had a record above the average on all twenty-one factors, and in fact, the 1,000 cases had men in all groups except the lowest two—with one factor or no factor above the average.

The following table gives the expectancy rate for nine groups of men paroled from Joliet based on the actual violation rate in the twenty-one factors.

Points for number of factors above the average	Number of men, each group	Expectancy rate, per cent violators			Per cent non-violators of parole
		Minor	Major	Total	
16–21	68	1.5	....	1.5	98.5
14–15	140	0.7	1.5	2.2	97.8
13	91	5.5	3.3	8.8	91.2
12	106	7.0	8.1	15.1	84.9
11	110	13.6	9.1	22.7	77.3
10	88	19.3	14.8	34.1	65.9
7–9	287	15.0	28.9	43.9	56.1
5–6	85	23.4	43.7	67.1	32.9
2–4	25	12.0	64.0	76.0	24.0

Similar tables were prepared for Menard and Pontiac with comparable results.

The practical value of an expectancy rate should be as useful in parole administration as similar rates are in insurance and in other fields where forecasting is necessary. These rates will be equally valuable in organizing supervision. Where probabilities of violation are great, confinement in prison is not the only alternative, but unusual precautions ought to be taken in placement and in supervision.

Although statistical prediction is practicable, exclusive reliance should not be placed upon it. There is still need for intensive and sympathetic study of individual delinquents. The scientific study of human behavior is only beginning, and our correctional institutions are laboratories for research waiting to be utilized.[1]

[1] Adapted from "The Workings of the Indeterminate-sentence Law and the Parole System in Illinois," pp. 221–234, 246–249, 1928; Burgess, Is Prediction Feasible in Social Work? An inquiry based upon A Sociological Study of Parole Records in *Social Forces*, vol. VII, pp. 533–545, June, 1929, Glueck, Predictability in the Administration of Justice in the *Harvard Law Review*, vol. XLII, pp. 297–239, January, 1929. In a note to this article, the statement is made that Dr. Hornell Hart was the "first person to suggest the possibility of adapting to penology the methods used in the insurance field for predictability." The authors used thirteen factors of success and failure: (1) industrial habits, (2) seriousness and frequency of crime, (3) arrests for crime, (4) penal experience, (5) economic responsibility (1 to 5 cover period preceding sentence to reformatory), (6) mental abnormality, (7) frequency of offenses in reformatory, (8) criminal conduct during parole, (9) industrial habits, (10) attitude toward family, (11) economic responsibility, (12) type of home, (13) use of leisure (9 to 13 cover period following parole). The study gives the results of examination of the post-parole conduct of all former inmates of the Massachusetts Reformatory whose parole expired in 1921 or 1922. There were 510 cases.

CRITICISM OF PAROLE

According to Dr. Kirchwey:

> The outstanding defect of the present methods of granting parole is the lack of expert knowledge on the part of the paroling authority, with, perhaps, a defective sense of responsibility to the greater community outside the prison walls. The obvious remedy for this condition of affairs is the concentration of this important function in the hands of a central board of parole, composed of persons of expert knowledge, devoting their entire time to the task and acting under a complete sense of official responsibility. With a body of this type, aided by qualified investigators and equipped with a staff of parole officers who can be depended on to furnish the requisite supervision and guidance to those released on parole, it is not too much to hope that the aim of those who conceived the indeterminate sentence may soon be realized.[1]

In 1925 the legislature of Pennsylvania established a commission "to examine the parole laws of this commonwealth and of other states and countries; to investigate systems and methods of parole and commutation of sentences; and to prepare and submit bills to carry into effect its recommendations." The commission, of which Dr. Louis N. Robinson of Swarthmore College was secretary, and Clair Wilcox of the department of economics of the University of Pennsylvania was assistant to the secretary, made its report early in 1927. In its report it described concisely the nature and purpose of parole and replied to current criticisms of parole. The following quotations from the report of the Pennsylvania State Parole Commission embody a clear and definite reply to the prevailing criticism.

> Vigorous attacks have been made during recent months upon the parole systems of several States. It can not be denied that many of the objections which have been voiced have been justified, in large measure, by faulty administrative methods which are in current use. Much of the recent criticism, however, is based upon a fundamental misconception of the nature and purpose of parole. Many persons are inclined to place parole in the category of executive clemency. They seem to think that its purpose is to shorten terms of imprisonment, to hasten the hour of release. They feel that the proponents of parole are actuated by a sentimental regard for the comfort of the criminal. This is a mistaken view. It is not the purpose of parole to lessen punishment, to make things easier for the offender.
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> *Parole is not leniency.* On the contrary, parole really increases the state's period of control. It adds to the period of imprisonment a further period involving months or even years of supervision, during which the offender may be reimprisoned without the formality of judicial process. In addition to this, the records in nearly every commonwealth where information is available reveal that the application of the parole system has lengthened the time served by the

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[1] KIRCHWEY, Parole in *The Survey*, vol. LIII, pp. 729–731, Mar. 15, 1925.

convict within prison walls. The recent report on Prisoners issued by the Federal Bureau of the Census shows clearly that the extension of the indefinite sentence has been accompanied by an increase in time served. Parole, then, does not operate as a favor to the criminal. Its chief merit, in fact, is that it offers society a far greater measure of protection against him than any other means of release which has yet been devised.

A properly administered system of parole aims to insure society against a renewal of criminal activity by the scores of convicts who are being released daily from our penal institutions. Under such a system the prisoner will not be released until the authorities have been assured that work will be provided him by a reputable employer. His proposed living arrangements will be subjected to careful scrutiny, so that he may certainly have a home which shall be free from criminal influences. Subsequent to his release, he will be required to report periodically to a designated official, stating, in considerable detail, the work he has done, the money he has earned, the money he has spent, the money he has saved, the manner in which his leisure hours have been occupied, and so on. Certain conditions will be imposed upon him. He will not be allowed to engage in certain types of activity. He will not be allowed to associate with certain people, to visit certain areas. Numerous other restrictions will be placed upon his daily conduct. The state will see to it that he observes these conditions. An agent will visit his home and discover whether he is providing for his family. His employer may be interviewed to determine whether he is constantly on the job. Other contacts will be made in the community to order to get a line on his general behavior. The parolee will find himself continuously under the eye of the state. Society need not wait until he is convicted for the commission of another crime in order to lock him up again. The slightest deviation from the straight and narrow path will bring him back within the prison walls. Parole may be a method of punishment, but, more than that, it is a method of prevention second to none.

For this reason, supporters of parole generally believe that every convict who emerges from a prison should be compelled to serve for a certain period under these conditions. The idea that parole should be given to good prisoners and refused absolutely in more serious cases arises from the mistaken notion that it is nothing more than a form of leniency. Many states, in fact, have so designed their laws that a period of parole must be served in all cases. In Massachusetts, for instance, all prisoners are sentenced for indefinite terms, both the maximum and minimum of which are set by the court. The Board of Parole may release any prisoner when he has served two-thirds of his minimum term. This right is exercised in about one-quarter of the cases which come up for consideration. But the law further provides that the board must release at the minimum and hold on parole until the maximum every prisoner who has behaved himself within the institution. In this way the state makes sure that convicts shall not leave its prisons without a further period during which their conduct is subject to definite social control.

It is this point of view which also has led believers in parole to advocate the imposition of longer maximum sentences, and even the use of indefinite commitments without maximum limits, in order to guarantee to society that greater measure of security which results from a well administered plan of parole.

It must not be understood, however, that parole is merely a detective measure. It does involve, to be sure, the somewhat negative activity of watchful waiting, of receiving reports, of enforcing the conditions under which liberty has been granted. But it involves far more than that. Good parole work should be a positively constructive process of social rehabilitation. It should aim to help the individual to find a place in the community, a place which will entitle him to respect himself and to be respected by others, a place which will enable him to make the most of himself and to discharge his responsibilities to those dependent upon him and to the community as a whole. The accomplishment of this purpose requires a continuous process of helpfulness, guidance and friendly assistance. The parolee must be encouraged to continue with the education which was begun within the institution. Contacts must be made for him which will bear within themselves the seeds of future regeneration. The prisoner must be protected against the community quite as much as the community against the prisoner. Each must be made to understand the other if the convict is to be re-established within the society against which he has offended.

Real parole work, therefore, is undertaken with the object of bringing about the reformation of the offender, and this is done, not through any softly sentimental desire to make his life easier, but for the obvious reason that it guarantees to law-abiding citizens a greater measure of security in the legitimate enjoyment of their lives and their property.

If no other reason were strong enough to support the system of parole, considerations of economy alone would compel its continuance and extension. If Pennsylvania were to require every prisoner to serve the full amount of the maximum term now imposed under the law, the taxpayers of the state would be called upon to shoulder the enormous burden which would be involved in the construction of extensive additions to her penal institutions. At the Eastern State Penitentiary, for instance, it costs about $450 a year to maintain a man in prison. The present annual expenditure for the parole service is about ten dollars per man. Even in a state like Illinois, which has the most elaborate system of supervision which has been developed, the annual cost per parolee is little in excess of one hundred dollars, less than a quarter of that which would be involved in imprisonment. Certainly, if Pennsylvania were to substitute a period of penal service for that now spent on parole, the state's annual budget for this purpose would need to be increased by nearly a million dollars. To this must be added the community's gain in having this large body of men and their families supported by their own industry rather than through public charity and taxation.

The Commission has proceeded on the assumption that parole has demonstrated its value as a method of release and that Pennsylvania, in common with her sister states, will continue in its use. But it wishes here to distinguish clearly between a parole system adequate effectively to accomplish the purposes outlined above, on the one hand, and current practice in parole administration, on the other. Those who believe in the use of parole assume that its administration will involve the three essential elements which follow:

I. That the state will make such provision for the educational and industrial training of the inmates of its penal institutions as to prepare them for life in the community.

II. That Boards of Parole will make an exhaustive and painstaking study of each case in order that they may hold in confinement those whose release would endanger the public safety and grant an early parole only to those who are fit to be set at liberty.

III. That the state will provide a sufficient staff of field agents to insure the continuous, efficient and sympathetic supervision of those who are on parole.[1]

Review Questions

1. Differentiate parole from good time laws, commutation of sentence and the pardoning power.
2. How does parole differ from probation? What is "bench parole"?
3. What three principles are involved in parole?
4. What is the relation between parole and the indeterminate sentence?
5. What is the real importance of the pardoning power in the administration of justice?
6. Explain the part of Montesinos and Obermaier in the development of good time laws.
7. What contributions were made by Maconochie and Crofton?
8. Compare the origin of conditional liberation and the indeterminate sentence.
9. Explain how information about parole was brought to the United States.
10. What was the status of parole and the indeterminate sentence in 1900.
11. Indicate the growth of parole and the indeterminate sentence from 1900 to 1922.
12. Describe the different forms of the indeterminate sentence in existence in different states.
13. What is the best form of paroling machinery?
14. Why should the parole board be free from political influence?
15. What is the weakest part of the parole system?
16. What are the conditions of eligibility for parole?
17. What conditions are made in regard to the conduct of persons on parole?
18. What requirements should be made in regard to violations of parole?
19. What is the situation as to final discharge, records and rules?
20. Why is it impossible to get definite information as to the results of parole?
21. What two attempts have been made to ascertain the after status of paroled men?
22. What is the best that can be said for parole at the present time?
23. Describe the factors determining success or failure on parole as worked out by Professor Burgess.
24. What conclusions resulted from the study of Illinois parole statistics?
25. What do statistics indicate as to the probability that persons of inferior intelligence will observe parole rules as compared with persons of average or superior intelligence?
26. Explain how an expectancy rate for paroled prisoners can be arranged.
27. What is the practical value of an expectancy rate?
28. What is the outstanding defect in the present methods of granting parole?
29. What is the obvious remedy?
30. Explain how much of the recent criticism of parole is based upon a misconception of the nature and purpose of parole.

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[1] *The Report of the Pennsylvania State Parole Commission to the Legislature*, Part One, pp. 10–16, 1927.

Topics for Investigation

1. Discuss the recent criticism of parole. See *The Survey*, pp. 729–731, Mar. 15, 1925.
2. Make a summary of indeterminate sentence laws and parole rules. See the *Journal of Criminal Law and Criminology*, pp. 580–602, February, 1928.
3. Study factors determining parole from the Massachusetts Reformatory. See Sutherland, "Criminology," pp. 531, 532; the *Journal of Criminal Law and Criminology*, pp. 172–207, August, 1923, and pp. 405–413, November, 1923.
4. Study the history of the indeterminate sentence and parole. See the *Journal of Criminal Law and Criminology*, pp. 9–69, May, 1925.
5. Study the development of parole in the United States. See *Social Forces*, pp. 318–325, December, 1925.
6. Study the experiences *of* ex-prisoners. See Lowrie, "My Life Out of Prison," and Older, "My Own Story," Chap. XXIII, XXXIV.
7. Study the life of a reformed criminal. See Black, "You Can't Win," and Older, "My Own Story," Chap. XXXV.
8. Describe the work of Mrs. Maud Ballington Booth among prisoners. See Booth, "After Prison—What?"
9. Study experiences with ex-prisoners. See Older, "My Own Story," Chaps. XXIII–XXIX, XXXIV–XXXV.
10. Describe the work of the Society for the Friendless and of the Central Howard Association. See reports and publications of these organizations.
11. Study predictability in the administration of criminal justice. See *Harvard Law Review*, pp. 297–329, January, 1929.
12. Is prediction feasible in parole? See *Social Forces*, pp. 533–545, June, 1929.

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1. SUTHERLAND: "Criminology," Chaps. XXI–XXII.
2. GILLIN: "Criminology and Penology," Chap. XXIX.
3. ROBINSON: "Penology in the United States," Chap. XI.
4. JAFFRAY: "The Prison and the Prisoner," Chap. X.
5. BRAMER: "Parole."
6. WITMER: The History, Theory and Results of Parole, in the *Journal of Criminal Law and Criminology*, vol. XVIII, pp. 24–64, 384–403, May, November, 1927.
7. BOOTH: "After Prison—What?"
8. HOBHOUSE and BROCKWAY: "English Prisons Today," Chap. XXVIII.
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10. LINDSEY: Indeterminate Sentence and Parole System in the *Journal of Criminal Law and Criminology*, vol. XVI, pp. 9–126, May, 1925.
11. *The Workings of the Indeterminate-sentence Law and the Parole System in Illinois*, 1928.
12. GLUECK: Predictability in the Administration of Criminal Justice, Harvard Law Review, vol. XLII, pp. 297–329, January, 1929.
13. WILCOX: Parole: Principles and Practice in the *Journal of Criminal Law and Criminology*, vol. XX, pp. 345–354, November, 1929.
14. WITMER: The Development of Parole in the United States in *Social Forces*, vol. IV, pp. 318–325, December 1925.
15. GLUECK: "500 Criminal Careers."

CHAPTER XV

PROBATION

Prison treatment follows the failure of probation and precedes parole. One may be a substitute for imprisonment while the other is a step from imprisonment to complete freedom. Probation grew out of the judges' power of continuing cases or of suspending sentences. The necessity for some method of supervision led to the development of volunteer probation officers and, later, to their recognition and payment by the community.

Probation arose in Massachusetts in 1878 in Boston, and, two years later, it was extended to the entire state. In 1891 the system was made compulsory for the entire state. Probation was not adopted elsewhere until the establishment of the juvenile court in 1899. Its use was greatly stimulated by the development of the juvenile court. By 1921 thirty-five states had adult probation and forty-seven had probation for juveniles.

While the number of states which have provided for probation is large, it would be a mistake to assume that it has been widely adopted. Most of the laws are permissive and not mandatory. Generally, its use is limited to cities.

Probation has had a slow growth because it has had to fight its way in the face of a hostile public opinion. Most of the opposition comes from the belief that it will undermine the efficiency of punishment as a deterrent of crime. Severity in the penalty is still thought of as essential to prevent the spread of crime. Popular opinion regards probation as a release from punishment. As a matter of fact, it means that the probationer must conform to strict regulations, and that the sentence may be imposed if he fails in any way to satisfy the requirements of the court. It is disciplinary rather than punitive in character.

Probation may be defined as the suspension of final judgment in a case, giving the offender an opportunity to improve his conduct while living as a member of the community, subject to conditions which may be imposed by the court, and under the supervision and friendly guidance of a probation officer.

This type of community treatment is a sharp reaction from the classical school of criminal law, which was interested in crimes and punishments rather than in the personality, potentialities and needs of the delinquent. In its progressive development probation becomes a form of social case work, departing from mass approach and stressing the individualization of treatment.

Probation and parole should not be confused. They are *alike* in that the offender is permitted to live as a member of the community under some form of supervision. They are *unlike* in that after guilt has been established, probation is a substitute for commitment to an institution, whereas parole follows commitment and a period of incarceration.

The administration of these two forms of supervision is generally carried on by distinct governmental units. Whereas probation is commonly a branch of court work, parole is either a function of a state board or under the direct oversight of a correctional institution. The *one is administered under judicial,* the *other under administrative control.*[1]

THE HISTORY AND DEVELOPMENT OF PROBATION

The legal practice of courts of suspending sentences temporarily or indefinitely gave rise to the need of some security for the continued good behavior of the persons released. Sometimes the offender was required to furnish a financial guarantee for his good conduct during the suspension of his sentence. More frequently some friend or responsible citizen would agree to assist such offenders. Probation merely provided formal organization for the informal arrangements under suspended sentences.

Massachusetts originated probation after a period of experimentation under voluntary auspices. John Augustus, a shoemaker of Boston, secured the release of certain offenders from the courts by acting as surety for them. During a period of seven years he became responsible for 253 men and 149 women for an amount that totalled more than $15,000 and it is said that not one of his charges violated the conditions of his release.

When Augustus gave up his work, the same service was continued by Rufus W. Cook, chaplain of the Boston jail, and known as Father Cook. He is described as a philanthropist and man of leisure, who became interested in the young men who were brought before the criminal courts in Boston. He made inquiry concerning the facts in each case and became a sort of unofficial adviser to the courts. Where there seemed to be reason to expect improved conduct under friendly supervision, the judges suspended sentences and placed the men in the charge of Father Cook. Later, after a period of good conduct, the case would be dismissed. Thus, the functions of volunteer probation officers were developed by Augustus and Cook, and other early workers whose names have not become so well known. Cook was active from 1872 to 1878, and his activities formed the immediate impulse for the legislation of 1878 authorizing the mayor of Boston to appoint a probation officer for Suffolk County. *This law marks the official origin of probation as a legal*

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[1] JOHNSON, "Probation for Juveniles and Adults," pp. 3–5, The Century Company, 1928.

system. Two years later another law was passed permitting cities and towns to appoint probation officers and making the system state wide.

Little progress was made under this permissive legislation, and in 1891, as a result of agitation by the Prison Association of Massachusetts, an act was passed requiring the criminal courts of the state to appoint probation officers.

The next significant forward movement came with the establishment of the juvenile court in 1899. By these courts the child, instead of being regarded as a criminal, is thought of as entitled to the protection of the state, which undertakes the responsibility neglected by the parents. It was a natural consequence, therefore, that the juvenile court should stress the need of probation officers, who, as agents of the court, could go into the homes and neighborhood to remove conditions that were responsible for the delinquency of the child.

In 1899 the Juvenile Court of Chicago was established by act of the Illinois legislature, which provided for the appointment of probation officers but made no arrangement for paying them, partly because it was thought that such officers might become political appointees if paid by public funds. The bill was drawn at the request of the Chicago Women's Club, and it was supported by the Chicago Bar Association as well as by the State Conference of Charities and the State Board of Charities. The experience of Massachusetts had a good deal of influence in the shaping of this measure, and its experience with probation was carefully considered by its framers and supporters.

As no public funds were provided for the payment of probation officers, a committee was organized to raise funds. Within five years the committee employed fifteen officers, of whom four were men and eleven were women. Their work was supplemented by the representatives of private societies. The first probation officer was a resident of Hull House. In 1905 the Illinois legislature authorized the payment of salaries to the probation officers of Cook County.

In Massachusetts no distinction was made between juvenile and adult probation. In other states juvenile probation advanced equally with the juvenile court, while adult probation was left to one side and developed more slowly. New York was the first state to establish adult probation by a general law in 1901 and juveniles were not included until two years later. This delay was due to the opposition of the societies for the prevention of cruelty to children who seem to have feared that their authority in the treatment of children might be reduced.

The Juvenile Court of Denver, with probation as an important feature, was established in 1899 under a school law passed by the legislature. With Judge Ben B. Lindsey at its head, this court has made a number of distinctive contributions. Legal responsibility was placed upon parents who were in any way connected with the delinquencies that brought children before the court. The juvenile court procedure was extended to cases of adults where non-support was charged and to cases of contributory dependency and delinquency. As already pointed out in an earlier chapter, Judge Lindsey's activity as a lecturer and his original reactions to the work of the juvenile court made him the leading personal exponent of the new methods.

During the years from 1899 to 1926 probation for children developed rapidly so that, at the end of the first quarter century, Wyoming was the only state that did not have such a system. Adult probation was established during the same period in thirty-six of the states, including all of the populous eastern and northern states with large urban population. The states without adult probation are

Florida
Iowa
Kentucky
Louisiana
Mississippi
Nevada
New Hampshire
New Mexico
South Carolina
South Dakota
Texas
West Virginia

No provision was made for probation in the federal courts until 1925, when such a law was passed and an appropriation made to pay the salaries of a limited number of probation officers, who were chosen under civil service regulations. The federal judges for a good many years suspended sentences in cases where imprisonment would impose special hardship. This practice was finally decided by the Supreme Court in 1916 to be without warrant in the law, and was stopped on the ground that it was an interference with the legislative authority on the part of the judiciary, and, in addition, an interference with the executive power to pardon. This decision affected over 2,000 persons on suspended sentence from the federal courts at the time. By the use of his pardoning power, the President released such of these as he thought worthy. Finally, after nine years of agitation, a federal probation law was passed.

Probation, beginning in the United States, has developed both in England and upon the Continent. The Probation of First Offenders Act was passed by Parliament in 1887. As its name indicates, it was limited to first offenders and no provision was made for the appointment of probation officers. Twenty years later, in 1907, the limitation to first offenders was removed and provision made for salaried probation officers. Probation in England and Wales applies to both juveniles and adults. The Criminal Justice Act passed in 1925 provided for probation officers in all the courts of the entire country. It also authorized committees to supervise probation and made grants from the central government to aid local probation work.

The development of probation on the Continent is comparatively recent and has many imperfections, when compared with the standards established in this country. A law for conditional sentence was first passed in France in 1891. There are no full-time paid probation officers, supervision being given by volunteers or by representatives of private societies. As in the United States the extension of probation in Europe was greatly aided by the establishment of the juvenile court.[1]

How Probation Works

The probation officer is the most important factor in the probation system. He makes investigations and reports to the court, before sentence, the facts of character, past record, home and social conditions and other important individual and social factors. He also has the supervision of offenders under the terms imposed by the court. He keeps informed as to their conduct by home visits and in other ways, and, by friendly and helpful means, aids them to improve their habits and circumstances. By gradually changing their associations and manner of life and by securing the cooperation of their families and of other persons, the probation officer brings about results that punishment rarely produces. This assistance has come to be the most important part of probation.

As already indicated, the probation system is a development from the court practice of continuing cases or suspending sentences. Necessarily some method had to be devised to keep track of the persons released. Personal reports, oversight of friends and employers, with such supervision as the judge could give, prepared the way for the probation officer to whom this work could be formally turned over.

> The weakness of suspending sentence without supervision or an adequate knowledge of the immediate past of the offender is shown by citing the case of a now notorious offender, who has been described by the judge who suspended sentence as "the meanest thief in New York."
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> In 1912 this man was arrested for stealing a change purse and a sandwich from a young girl on her way to work. He was convicted in one of the county courts, and the day he was to be sentenced his "wife and four children" appeared in court. The man told a pathetic story to the judge regarding his wife's health, and the dire needs of the family. The judge, touched by his story, not only suspended sentence, but started a collection of $100 as a contribution to the supposedly needy family. Later, disquieting rumors regarding this offender came to the judge who had suspended sentence and he requested that an investigation be made. The investigator found that not only was the man unmarried, but the alleged "wife and four children" had disappeared. So had the offender.
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> In 1914 the man was again arrested and convicted and the sentencing judge, having knowledge of the trick played upon his colleague, sentenced the "meanest thief" to five years in one of the state's prisons. In June 20, 1922, he was again arrested for pickpocketing by the same detective who arrested him ten years before. He blithely told of his experiences and his former record and laughed

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[1] Johnson, "Probation for Juveniles and Adults," pp. 6–16, The Century Company, 1928; Gillin, "Criminology and Penology," pp. 808–813, The Century Company, 1926; Robinson, "Penology in the United States," pp. 195–199, The John C. Winston Co., 1921.

when the police recalled the "family" he had brought into court to touch the heart of the judge.[1]

The work of the probation officer is of the most varied character. His task is the reformation of the offender, and he can accomplish it in any way he finds possible without forcibly controlling his actions. This inability to control the activity of the offender, as is done in a correctional institution, determines the first work which a probation officer must do in each case. He must find out and decide whether the individual is suitable for probation. Many delinquent persons are not adapted for such methods of treatment, but require constant oversight and discipline. "Stability of residence and of family connection, a reasonably favorable previous record of behavior, in the case of adults a work record which does not suggest well-developed antisocial tendencies, and a measurable degree of emotional control are among the tests most frequently applied.[2]

Once the offender has been placed on probation, the second phase of the work of the probation officer begins. The problem is to change the attitude of the probationer—to help change his point of view so that he will look at life in a different way. A scientific technique for the modification of attitudes has not yet been developed. A great deal of information of this sort is in the minds of experienced probation officers, but it has not been definitely formulated for use. Such statements as "by gaining the confidence and friendship of the young man," "through friendly admonition and encouragement," and "by stimulating the probationer's self-respect, ambition and thrift," do not help very much in the making of plans to assist a particular individual to regain the place in a community he has lost, or to reeducate the young person who has had little chance to form character because of unfavorable environment.

The attitude of the individual is largely a product of social contacts. The technique of reformation consists chiefly in changing or enlarging the group relations of the probationer. Either the probation officer, or a Big Brother or Big Sister, or a club, settlement or church must make the probationer feel that he has intimate friends who are interested in him, and that these new friends are more worth while to him than his old associates who led him into trouble. Such a result cannot be brought about by preaching, or threatening or ordering. Only as one friend helps another in intangible ways can social attitudes be fundamentally altered. The essence of probation is "constructive friendship." The probation officer must cultivate all that is good in the individual and attempt to get rid of the qualities which have gotten him into trouble. Furthermore, he must be familiar with the home environment of his charge.

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[1] *Journal of Criminal Law and Criminology*, vol. XIV, pp. 139–140, May, 1923.

[2] Johnson, "Probation for Juveniles and Adults," p. 4, The Century Company, 1926.

One probation officer said: "When you undertake to make over the average delinquent your work will be one-fourth reforming him and three-fourths reforming his family."

It is evident that the work of the probation officer is personal in its character. Mass probation, like mass education, cannot produce good results. A teacher may lecture to large numbers and a minister may preach to large numbers, but effective teaching and preaching are not accomplished in such ways. Personality must touch personality and numbers dilute the contagious influence that one person can exert upon another. The larger the number of probationers assigned to a single officer the more he must depend upon purely mechanical means, such as formal reports at his office once or twice a month in place of frequent social contacts that would make formal reports unnecessary. No exact limitation of numbers can be estimated, but, on an average, forty or fifty are enough for a single officer.

The probation officer is often so overloaded with cases that his contact with those under his supervision is of the slightest. Sometimes as many as eighteen hundred individuals may be under three or four officers. Probation under such circumstances is a farce. The overloading is only too common. In spite of the saving to the community by the use of probation, it is difficult to get sufficient funds for the support of an adequate staff. An inadequate staff means fewer contacts with probationers. How much can a weekly visit do in outweighing the evil influences which are exerting their forces on the individual day in and day out? The average of a visit a week is probably better than is actually maintained in most places. Is it any wonder that probation fails so frequently? Real probation has very rarely been tried.[1]

So far, the sociological aspects of probation have been presented with the idea of suggesting the interaction of influences that make up what may be described as the sociology of probation. The concrete phases of the work must now be considered. Massachusetts and New York are the two states in which probation is applied on a state-wide basis and for which we have careful studies and statistics.

A survey of the development of probation in New York from 1907 to 1921 showed that 233,100 persons were placed on probation during that period. Of this number 72,003, or 30.9 per cent, were children and 161,097, or 69.1 per cent, were adults. While 233,100 persons were placed on probation, 306,942 preliminary investigations were made. The number of preliminary investigations is an index of the care used in selecting offenders for probation. From 1915 to 1921 probation officers made 797,160 home and other visits. The number of such visits is an indication of the kind of supervision given to persons on probation and is an answer to the claim that probation consists merely in having offenders report to the probation officer once or twice a month.

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[1] Sutherland, "Criminology," pp. 573, 576–577, J. B. Lippincott Company, 1924; Robinson, "Penology in the United States," pp. 200–204, The John C. Winston Co., 1921).

While the probation service is not intended to act as a collection agency, the advantages of having a court direct its probation officer to make collections in cases of non-support, fines paid in installments and for restitution was early recognized. The use of probation for collecting payments from men for the support of their families increased from year to year. Before probation was used, the non-supporting or deserting husband was sent to jail and his family suffered from lack of the necessities of life, or became dependent upon public relief. The evils of imprisoning a person because he is unable to pay a fine at the time of his conviction have been pointed out by judges and prison officials. Probation gives the defendant a chance to avoid imprisonment by working and earning the money with which to pay his fine in installments. When persons on probation are required to make restitution or reparation for the damages or losses caused by their criminal acts, the purpose is not so much to compensate the injured parties as to produce the moral effects that the making of the payments will have on the probationers.

During the period studied in New York, the probation officers collected a total of $5,504,212.39. Of this amount, $4,726,388.52 was collected from non-supporting and deserting husbands for family support; $268,780.59 for fines paid by installments; and $509,043.28 for restitution. The officers also supervised the additional payment under court orders of $2,816,900.71 direct to beneficiaries.

Preliminary investigation of delinquents brought before the courts in advance of the actual hearing of the case, home and other visits and contacts with the probationers under his supervision, and collections and payments made under his control constitute the chief types of activities in which probation officers engage. Probation is a form of social case work in which the cases are selected, first, by the fact of delinquency, and, second, by the probability that the delinquent can be readjusted without resort to institutional treatment. The probation officer selects his cases, plans their treatment or rehabilitation and supervises the application of the arrangements made for the social readjustment of his charges. Concrete activities have grown from actual handling of individual cases. A technique of reeducation is gradually being worked out, although it has not as yet been formulated in definite codes or regulations or as fundamental principles of action.[1]

THE NEW YORK EXPERIMENT IN PROBATION

An interesting demonstration of the possibilities of probation has recently been conducted by E. J. Cooley in connection with the Court of General Sessions, a court for adults, under the auspices of the Catholic Charities of New York City. He was given unlimited financial support and a free hand in the selection of a staff in an effort to harmonize theory and practice in adult probation work. In the judgment of C. L. Chute, the general secretary of the National Probation Association, this was

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[1] *Journal of Criminal Law and Criminology*, vol. XIV, pp. 145–147, May, 1923.

> . . . a unique experiment in well-organized, "standard" probation work. Never before, so far as I know, has a probation office, serving a great court, been established on so adequate a basis, as to salaries and personnel, with practically unlimited financial support, prepared to carry out the best methods in individual study and case treatment of the varying types of delinquents coming before such a court. Equipped with an adequate personnel of college trained men and women, commanded by a Chief Probation Officer, of long experience and of inexhaustible energy and enthusiasm, results were bound to follow.
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> These things happened: The court, as all its judges will testify, has been immeasurably aided in the primary task of dispensing justice and protecting the community. A high standard of individual diagnosis of delinquents has been set. Real probationary treatment, disciplinary and constructive, has been administered, resulting in setting right with society for permanent, good citizenship many and many a boy and young man who, under lax and poorly administered probation, would never have been reached.

The New York State Probation Commission described the undertaking as "the first experiment in scientific probation work in America" and as "*the outstanding contribution to probation work made during the past twenty-five years.*" The attitude of those in charge was that of scientific research. "In their efforts to reform, or rather change, the unsocial habits of probationers and to adjust them to a normal life, the social workers of the court utilized all of the social resources of the community, particularly the contributions of sociologists, psychologists and psychiatrists, to throw some light on the mysteries of human conduct."

The period of the experiment was not to exceed two years, and it was intended to prepare the way for a publicly salaried probation bureau under civil service regulations. For a score of years the probation work of the court had been carried on by denominational organizations, Catholic, Protestant and Jewish, handicapped by inadequate funds, insufficient personnel, and a lack of public interest. The magnitude of the work of the court is suggested by the fact that, in 1925, 2,738 persons charged with felonies were convicted by plea or trial before nine judges, and charges against 2,804 others were disposed of by acquittal, dismissal, or discharge, or because defendants had been found insane or had forfeited bail.

The experimental bureau embodied the highest standards of probation practice as well as the basic principles of social science. The staff included, in addition to the chief probation officer, a supervisor of investigations, a supervisor of case work, the probation officers, an employment counsellor, clinical service and a registrar. An adequate stenographic and clerical force was appointed, and the necessary office equipment was provided. The probation officers, selected on a basis of personality and training, were all college graduates and were experienced in various branches of social work.

A division of the staff into an investigation and supervision corps permitted the officers of each branch to give full time to their respective duties of diagnosis and treatment. Officers especially suited for investigation were developed as specialists in social diagnosis, while officers with aptitude for constructive case work were enabled to devote their efforts to the supervision of probationers. Such a division of the staff in a large bureau is essential for a high level of accomplishment.

One of the most urgent tasks facing the administrator of the bureau was that of providing additional and more intensive training for the staff. Because of high standards and the difficult problems presented, the chief of the bureau took complete personal charge of the process of training and supervision. The work of the officers was checked, and mistakes and shortcomings were remedied. Daily bulletins treating every angle of probation practice were issued, and the officers were given manuals and literature to study. Staff conferences were held two or three times a week to discuss methods and difficult cases. Reading assignments in criminology, mental hygiene, social case work and psychology were distributed, and this material was discussed in the staff conferences. The officers were encouraged to take night courses and attend lectures on criminology, psychology, sociology and allied subjects. During the summer most of the staff attended special courses in one of the universities of the city. A library was developed, the facilities of local libraries were utilized, and current publications were made available. Every possible means for broadening the viewpoint of the probation officer, for deepening his understanding of the importance of the work, for arousing his enthusiasm and for bringing the service to the highest efficiency was used.

Through cooperation with the Social Service Exchange, the bureau was brought into working relationship with the social resources of New York City. More than *sixty per cent* of the cases investigated were found to have been known to other agencies. Information was also obtained in the same way from agencies in other cities. The court was thus linked with the great community enterprises of the city.

Modern clinical service was utilized. All defendants free on bail were given psychiatric, psychological and physical examinations. In prison cases the slightest indication of abnormality resulted in a thorough examination. The mental, emotional, and physical status of all delinquents placed on probation were ascertained. Clinical facilities were made available by the remarkable cooperation received from the clinics of the city.

In order to determine accurately whether the offender under investigation was a repeater or a first offender, the bureau, in cooperation with the police department, established a finger-print system which was used to search local records and to secure out-of-town records. The task of investigating the criminal histories of delinquents was emphasized by the bureau, and one officer was detailed exclusively to this work.

The organization and training of the staff, a working relation with other social agencies, the utilization of clinical services and the checking of criminal identity and history were all developed to the highest possible standards. Never before has probation work so nearly attained to the status of scientific method. Nothing was omitted that experience, enthusiasm, energy and scientific information could suggest.

The *social diagnosis*, as carried out by the bureau, comprised not only an exhaustive analysis of the offender's personality and environment, and of all the subjective and objective forces which had been instrumental in shaping the result, but also included a careful consideration of his tendencies and potentialities.

A definite method of social diagnosis, adaptable to any form of delinquency, was used in each case. No matter how serious or how trivial it might appear, each case was subjected to intensive analysis. To insure satisfactory results, each officer was made responsible for only *twelve investigations monthly*. The standard field sheet contained a questionnaire covering 162 items. This field sheet was worked out very carefully and was so planned that it could be adapted to every situation.

The social diagnosis provided the court with a complete picture of the *offender* and the *offense*. It furnished a basis for the disposition of the case and indicated the treatment required. The report to the court, which was accurately, completely and concisely written, was a comprehensive summary of the pertinent facts of the investigation. Uniform and orderly in presentation, it was typed in triplicate and averaged about three pages in length. It was submitted to the judge twenty-four hours before the day of sentence, and the decisions of the court were largely based upon its findings. A carbon copy was sent to the institution to which the defendant was committed. Institutions to which the defendants were subsequently transferred and the parole authorities also had available the same comprehensive social and criminal history, as a basis for constructive work.

Of the 2,976 offenders investigated from January 1, 1925 to September 1, 1926, only 19 per cent were placed on probation. Of the total number investigated, 97 per cent were men and 3 per cent were women. Crimes of acquisitiveness and violation of property rights formed 78.2 per cent of all the cases. One of the significant facts revealed in the statistical analysis was that 43.5 per cent were between sixteen and twenty-one years of age. Defendants between twenty-two and twenty-five comprised 19.1 per cent, so that the total number under twenty-five constituted 62.6 per cent. Defendants from twenty-six to thirty totalled 17 per cent, while those over thirty made up the remaining 20.4 per cent.

Of the men offenders, 52.7 per cent were arraigned for the first time in any adult court. Of this number 8.2 per cent had been previously in the children's court, while 44.5 per cent had never been arrested before nor brought before any court; 75 per cent of the women were arraigned for the first time in any court. *The problem of the court* was, therefore, shown to be in a *majority of cases* that of the *youth* and *the first offender*. This statistical result conclusively justifies the existence of probation service.

> An examination of the social factors in the lives of these delinquents indicates that their antisocial acts represent essentially the conflicts and misdirected energies of youth. Neglected and improperly trained at home, maladjusted at school, lacking in religious instruction, unskilled vocationally and ignorant of the industrial possibilities of the city, bewildered by the conflicting activities and temptations of a huge metropolis, and lured by visions of speedy and easy affluence, the offenders had applied their youthful energies to daring and unlawful activities.

The *supervision of probationers* was conceived by the bureau as a process of intensive reeducation and adjustment. In accordance with the standards of case work maintained by the best social agencies, two basic principles guided the supervisory treatment: (1) the treatment must be individualized, and (2) permanent rehabilitation must be the sole objective. The probation practice aimed at an intimate personal relationship between the probationer and his officer. Every helpful social agency and institution was called into use to surround the individual with a network of favorable influences, to assist him to attain and maintain normal habits of life.

> Basically, the task of adjustment was to break down the social isolation of the probationer, to divert his antisocial tendencies into channels of orderly behavior, to direct a redistribution of energy and interest, to return him to the common path of normal men, and to bring about socialization within himself and the community.

Each supervision officer was responsible for *only fifty cases* at any one time, usually assigned according to the district plan. Special problems, however, were turned over to officers who were prepared to meet the needs of the individual. Women probationers were supervised by women officers.

The average period of probation was three years, followed by a "friendly postperiod supervision." No probationer was discharged from supervision until the case objectives had been realized. Where these had not been achieved, the period of probation was extended.

Probationers were required regularly to report weekly. If out of work, daily visits to the office were demanded. Reports were received five nights a week and ample time was given to each individual. Undesirable contacts between probationers were avoided, and each officer received his charges individually in a private office. Special arrangements were made for out-of-town probationers. Home visits were made twice monthly and more frequently when circumstances warranted. The places of employment were visited monthly.

The supervision of the bureau was a form of social case work with the added power of the law behind it. Absconders and other violators of probation were pursued relentlessly and evasions of probationary oversight were reduced to a minimum.

An exacting analysis of the results of the supervisory work of the bureau indicates that 85 per cent of the probationers will be permanently readjusted. This high percentage of success is due to four factors: "(1) careful selection of probation material; (2) the service of college trained, skilled and enthusiastic probation officers of good personality and character; (3) individual, scientific social case work as the standard of supervision in each problem; and (4) ample resources and equipment."

The continuation of this high-grade probation work has been assured by the passage early in 1926 of a law that empowers the judges of the court to determine the number of probation officers, clerks and typists necessary to the probation work and to fix their salaries. The publicly supported probation bureau was inaugurated on January 1, 1927. The budget proposed for it provided for a staff to consist of a chief probation officer at a salary of $7,500, two deputies at salaries of $5,000, thirty-six probation officers at minimum salaries of $3,000 a year, and an adequate force of clerks and typists. The number of employees suggested for the bureau totalled sixty-seven, and the budget expenditures amounted to $210,672.25. This budget was adopted by the judges, June 16, 1926.[1]

THE ADMINISTRATION OF PROBATION

Massachusetts and New York are the states in which the most satisfactory organization of probation exists. Both states have unpaid commissions in charge with a full-time salaried deputy commissioner in the former and a full-time paid secretary in the latter. The commissions are supervisory rather than administrative. They have assisted in the improvement and standardization of local probation work, have provided manuals of instruction and forms for use, have published articles of educational value and have arranged conferences.

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[1] Adapted from COOLEY, "New Goals in Probation," published by State Probation Commission, Albany, N. Y., 1926; COOLEY, "Probation and Delinquency," Catholic Charities of New York, 1927.

The New York State Probation Commission was created in 1907 upon the recommendation of a special commission appointed in 1905 to "make a careful inquiry into the operations of the probation system" in the state. In its report to the governor it said that "the appointment of probation officers has been carried into effect in but few of the courts. The underlying weakness of the probation system as now conducted is to be found in the very large number of courts possessing the power of appointment of probation officers and in the absence of any supervision, coordination or organization of the probation officers, except such as may be exercised by the courts to which they are attached. There are practically as many systems of probation as there are courts using the probation law."

To remove these evils and to make probation service state wide, the commission declared in favor of central state supervision. Their report stated that, while they believed probation work must be allowed a good deal of flexibility to meet local conditions . . .

> there should be provided some form of central oversight. This should involve the collection of information in regard to the extent to which probation is utilized in different portions of the state from time to time, the manner in which probation work is carried on, and the value of the results secured. It should include the authority to make formal and detailed investigations of probation work in any given court or locality, when such are deemed advisable; it should provide for the making of suggestions to the legislature from time to time for the improvement of the probation system, and for recommendations from time to time to public authorities, judicial and executive, concerned in the administration of probation; it should involve the promotion of probation in those localities in which it is not availed of.

As a result of this report, a commission was established "to exercise general supervision over the work of probation officers, to keep informed as to their work, to improve and extend the probation system, to collect and publish information thereon and make recommendations."

In 1907 probation was used in 16 city, 1 village and 11 county courts; in 1921 it was used in 54 out of 59 cities, in over 38 towns and villages, and in 51 out of 62 counties. In 1907 the number of paid probation officers was 35; in 1921 the number had increased to 249.[1]

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[1] *Journal of Criminal Law and Criminology*, vol. XIV, pp. 143–144, May, 1923. In 1928 the Division of Probation became a bureau of the Department of Correction. The former secretary became the Director of Probation. The former commission is continued as an advisory body. Enlarged powers were given to the new division, particularly that of adopting general rules for the administration of probation, which, when approved by the commissioner of correction, will have the force of law. A salary of $5,000 was provided for the Director of Probation and salaries of $3,000 each for three assistants. *The Probation Bulletin*, April, 1928, published by the National Probation Association.

The Massachusetts Commission on Probation was created in 1908. The development of probation is shown in the following figures for the years covered by the reports of the commission:

1909	13,967	1916	28,953
1910	15,518	1917	30,588
1911	15,887	1918	24,017
1912	17,538	1919	24,537
1913	21,074	1920	18,209
1914	24,714	1921	23,845
1915	27,994	1923	29,763

In 1915 of all convicted offenders, 24.3 per cent were placed on probation; in 1923, 26.3 per cent. The proportion of convicted offenders who were committed to institutions declined from 16 per cent in 1915 to 5.8 per cent in 1923.

Out of 1,000 convicted offenders, the number placed on probation in 1916 was 262; in 1917, 252; in 1918, 257; in 1919, 254; in 1920, 232; in 1921, 247. These figures show that the proportion of probation dispositions to the whole number is strikingly uniform. It does not vary far from one-quarter of the total dispositions. It is the nearest to static of any of the forms by which the courts dispose of their offenders. In contrast, the number committed to institutions has manifested greater change, being reduced as low as 55 out of 1,000 in 1920 and rising to 77 in 1921. Evidently, probation has been developed to a point of stable equilibrium in the Massachusetts system of criminal justice.[1]

In Indiana there is a state department of probation with an advisory commission of five and a state probation officer, who, under the law, must prescribe and approve the qualifications of local probation officers before their appointment. The state officer also edits a four-page paper, the *Indiana Probation News*, which is distributed five times a year to 13,000 judges, probation officers, social workers, editors, lawyers and other interested persons. Under the terms of the law, judges of circuit and criminal courts and of municipal and city courts in cities of the first and second class may appoint probation officers according to their needs. In 1927 there were 116 probation officers, 41 men and 75 women. Twenty-two new officers were appointed during the year. Only 22 counties out of 92 are without probation. During the year ending September 30, 1927, 11,173 persons were placed on probation, of whom 4,363 were adults and 6,810 were juveniles. Money collected "for support of families, fines, restitution and damages, not including sums paid direct to the beneficiary or to the county clerk on account of probation" amounted to $75,736.[2]

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[1] *Annual Report of the Commission on Probation*, Massachusetts, 1921, p. 17; *Report of the Commission on Probation on an Inquiry into the Permanent Results of Probation*, Massachusetts, p. 9, Senate Document 431, 1924.

[2] *Seventh Annual Report of the State Probation Department*, Indiana, 1927.

A number of other states have followed the example of Massachusetts, New York and Indiana in providing for state supervision of probation. In Ohio supervision is vested in the State Department of Public Welfare; in Michigan record forms are furnished by the State Welfare Commission and statistics giving the results of probation throughout the state are published in its reports; in Wisconsin adult probation is organized on a centralized administrative basis. Children on probation are placed under the supervision of local officers, but adults over twenty-one, if convicted, must be assigned to the state probation department with offices in Madison and Milwaukee. A survey of probation work in Wisconsin found defects in this plan.

Two other states, Rhode Island and Vermont, have state administrative organization. One is served by a state probation officer, with headquarters in Providence, and the other has placed probation in the hands of the commissioner of public welfare. The objections to central administration, which appear in Wisconsin and in larger states, do not apply to smaller states like Rhode Island and Vermont. Vermont has only one-sixth of the area and one-eighth of the population of Wisconsin. Forty per cent of the population of Rhode Island is in Providence.[1]

Results of Probation

National statistics are not available as to the extent and results of the use of probation. Two states, Massachusetts and New York, may be cited as typical of what is occurring, though less rapidly, in other states.

In 1923 the Commission on Probation was directed by the Massachusetts legislature to make "an inquiry as to the results of probation by a survey of the conduct, subsequent to their probation term, of persons who have been under the care of probation officers, for the purpose of determining the efficiency of probation as a means of securing lawful and orderly behavior of persons who have been offenders." The report was made in March, 1924.

The commission selected the first half of the year 1915 as the period in which the cases to be studied for subsequent results were placed on probation. For the field of the survey, it undertook to get a fair cross-section of the state by selection of courts whose jurisdiction represented varying conditions, rural and urban, residential and industrial, and whose methods represented all the variations of the probation service. The investigations of conduct were continued down to July 1, 1923. The subsequent history of probationers, consequently, gives an experience over a period of about eight years. The survey was conducted by trained investigators and field workers. The total number of cases studied was 2,114. They were classified as follows:

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[1] Johnson, "Probation for Juveniles and Adults," pp. 63–64, The Century Company, 1928; Chute, Developments in the Probation Field in the *Proceedings of the National Probation Association*, p. 15, 1928.

Juvenile		312
Boys	296	
Girls	16	
Adults		1,802
Men	995	
Women	242	
Unclassified by sex	565	
Total		2,114

The offenses were as follows:

Women:	
General offenses	205
Drunkenness	37
Men:	
General offenses	383
Non-support	157
Illegitimate child	51
Non-support of parents	9
Vagrants	74
Drunkenness	321
Unclassified by Sex:	
Suspended fines, drunkenness	209
Suspended fines, general offenses	211
Suspended fines, violation of ordinances and traffic laws	76
Ordered to leave jurisdiction	36
Too late for tabulation	33

In the cases classified as "general offenses" for men the results of probation were as follows:

		Per cent
Satisfactory response	227	59
Less satisfactory response	68	18
Committed to institution	36	9
Disappeared	50	13
Died	2	1

Following the same group after probation and down to 1923 the results are as follows:

		Per cent
With subsequent court record	136	36
Without subsequent court record	165	43
No information	80	21

Judged further by commitments to institutions subsequent to probation, only 46 (12 per cent) are known to have been committed. As those who have had a later court record included those who were surrendered for their failure on probation and committed, a separate showing as to those who completed their probation and were discharged reveals that 76 per cent have had no subsequent court record, and that of those who were not surrendered and committed for failure on probation 97 per cent have had no commitment to institutions for subsequent offenses.

A general summary of the operation of probation in adult cases led the commission to these three conclusions: (1) it is an effective method of correction; (2) it is employed by the courts with discrimination; and (3) the probation officers perform their duties with a sense of responsibility. Particular attention was called to the small number of persons placed on probation who had committed serious offenses.

The summary as to the results of juvenile probation also was satisfactory. The group of nearly 300 boys advanced from an average age of fourteen to an average of twenty-three years. In this period fifty-six out of every hundred had no subsequent court record. Of the boys discharged from probation, sixty out of every hundred had no subsequent court record. As only one-third of these were sent to institutions for their later offenses, it is shown that eighty-seven out of every one hundred boys carried through probation were not subsequently committed to institutions.

During the period since probation, seventy-eight out of every hundred boys had no adult court record. This includes those committed to institutions while on probation. Of those carried through probation eighty-two per cent had no criminal court record in an average adult period of four years. Such a showing the commission regarded as "amply demonstrating the value of probation as a method of dealing with juvenile offenders."[1]

In connection with the fiftieth anniversary of the establishment of probation in Massachusetts in 1928, Herbert C. Parsons, the active head of the Massachusetts Commission, declared that the state had not built "an additional cell in twenty-five years. It has fewer prisoners by far than twenty-five years ago. Massachusetts has about the lowest crime rate in the country. It has fewer homicides, fewer violent crimes, fewer burglaries—far fewer than those states which have been indulging in bond issues to build jails and which still rely chiefly upon the old rule of inflicting penalties. Massachusetts saves her taxpayers the dead weight—not only of the prison population, but of the families of offenders. Last year the probation officers collected $1,900,000 chiefly for the support of the families. Massachusetts has demonstrated that by the use of probation the volume of crime is greatly reduced, property and life are best protected and countless human beings instead of becoming criminals are salvaged to some good purposes."[1]

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[1] *Report of the Commission on Probation on an Inquiry into the Permanent Results of Probation*, Massachusetts, Senate Document 431, 1924.

In New York during the period of fourteen years from 1907 to 1921, 206,298 persons were discharged from probation. In 159,939 cases, or 78.5 per cent, the results were satisfactory and the offenders were discharged as improved. Only 22,560 probationers, or 10.9 per cent, were rearrested and committed, and 11,703 or 5.7 per cent, were discharged unimproved; 10,096, or 4.9 per cent, absconded.

The reported results of children discharged from probation with improvement varied little during the fourteen years. Over 80 per cent of all children discharged from probation were discharged improved, while only 4 per cent were discharged without improvement, and approximately 14 per cent were rearrested or committed to institutions.

The reported results of adults discharged from probation showed that over 75 per cent were discharged improved, while less than 10 per cent were rearrested or committed, and, on the average, less than 7 per cent were either discharged unimproved or absconded.

"Probation has passed through the testing or experimental stage in New York State. It has proven to be both socially and financially profitable."[2]

Criticism of Probation

In an effort to determine the relative results of probation and penal treatment in Baltimore, two groups of offenders were studied. One group was made up of 305 persons placed on probation during 1923 and the other of a like number of convicts released from the Maryland Penitentiary at or about the same time.

The probationers represented all the criminal cases handled by the probation department in which probation was granted in 1923. Of a total of 3,164 cases resulting in conviction in the criminal court in 1923, probation was granted in 810 cases, or 25 per cent of the whole number. Of these, 425 were domestic relation cases. The number of criminal cases, therefore, in which probation was granted was 395. Of these, 90 were either released on probation to no one, or to someone outside of the probation department, or no record was found.

As the number of convicts released in 1923 was only about 150, it was necessary to select 75 who were released during the last six months of 1922 and the same number granted freedom during the first half of 1924. The subsequent conduct of the two groups was studied over a period of two years and nine months.

[1] *The Daily Iowan*, Aug. 11, 1928.

[2] *Journal of Criminal Law and Criminology*, vol. XIV, pp. 145–147, May, 1923.

COMPARATIVE TABLE SHOWING SUBSEQUENT CONDUCT OF INDIVIDUALS IN THE TWO GROUPS

	Probation group	Penal group
Total number	305	305
Whites	158	119
Negroes	147	186
Arrested	112	109
Times arrested	243	339
Times convicted	89	94
Criminal court	31	41
Police court	58	53
Social agencies	63	42

The first conclusion from this table is that the subsequent conduct of the probation group is little, if any, better than that of the penal group. The penal group was at least deterred from further depredations during the term of imprisonment, while the probation group continued their dangerous and costly antisocial acts without interruption. The probation group was parasitic rather than productive industrially. On the other hand, the average prisoner in the Maryland penitentiary earns for his own use $200 yearly. Many prisoners thus were a greater financial asset to their families in prison than outside.

As a result of this study it would seem that the statement that a man on probation costs only a fraction of the cost of maintenance of a convict in a penal institution is not true in Baltimore. This situation existed after probation had been in use in the state of Maryland for more than thirty years.

Undoubtedly, the conditions in Baltimore are representative of the results of probation in many parts of the country. Such outcomes are due to the fact that the selection of probationers is not carefully made, plans for readjustment are not formulated to meet the needs of individuals, and probation officers are given more cases than it is possible for them to supervise properly. The lack of trained workers, appointed for merit and not because of political affiliations, means that real probation is not actually applied. Theoretically, probation is sound, but its application implies the recognition of factors that are too often overlooked. So-called "probation" may mean little more than haphazard release of offenders without careful investigation and for sentimental, emotional and political reasons.[1]

Probation is provided for effectively only in the urban sections. The situation in Iowa is typical. The state has probation for juveniles only. The latest revision of the code declares that probation officers in counties of less than 30,000 population shall serve without pay. There are eighty-four counties with less than 30,000 inhabitants and only fifteen with population in excess of that number. One-third of the people living in the counties of over 30,000 enjoy the benefits of juvenile probation, while the other two-thirds must depend upon the voluntary service of public spirited persons. The immediate need is to provide for the extension of probation to the strictly rural communities which comprise the larger portion of the state.

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[1] *Journal of Criminal Law and Criminology*, vol. XIX, pp. 64–74, May, 1928.

There is a variety of reasons for the backward rural development of probation, such as sparsity of population, lack of financial resources, difficulties of transportation and poor organization of the courts. A county with only a small population is not likely to have a volume of work which will warrant the appointment of a person to give all of his time to probation duties. The consolidation of jurisdiction over an entire county is essential to make adequate service available in rural districts. Isolation of each court from every other court prevents the interchange of ideas. Some form of state supervision is necessary to provide uniform probation in all parts of the states. It is especially important for the rural regions, and, in those localities, there is much opposition to the encroachment of the central authority of the state.

In a review of Developments in the Probation Field, Mr. Chute, secretary of the National Probation Association, describes the situation in the following terms:

> Progress has been made, real progress, but we have a long way to go. The public as yet does not even recognize standard work, much less demand it. Most probation work, especially with adults is undermanned, unstandardized, largely police surveillance. Appointment for merit and ability is not yet even common. Politics, the bane of public service, still reminds one of the old saw, "you're damned if you do [use it] and damned if you don't." Probation officers still must steer a careful course, sometimes must use politics, but must not be used by it and, of course, aim at the complete elimination of political interference. We should increasingly direct our propaganda, or educational work, to the lawyers who become the judges, and to the thinking public who govern in the long run public service appropriation.[1]

When fifty years ago Massachusetts enacted the original probation law, the first stone of the edifice of preventive justice was well laid. In the present century for a long time there was a rapid development which has set penal legislation and administration in a direction it must keep for a long time to come. But over-enthusiasm in the decades of progressivism, inadequate provision for administration of the new devices, the necessarily experimental character of some of them, leaving many things to be worked out by trial and error, and the strain put upon the whole machinery of criminal justice by post-war conditions in our large cities, have brought all the agencies of preventive criminal justice under suspicion. Study of the means of insuring that the results of probation and kindred devices of individualized penal treatment may be made reasonably predictable is not merely in the right line of legal thought of to-day, it is needed to save for us one of the really epoch-making discoveries of American legal history. Let it once be made clear that probation laws may be administered with a reasonable assurance of distinguishing between the sheep and the goats, let it be shown that the illusory certainty of the old system may be replaced by a regime of reasonably predictable results as compared with one of merely predictable sentence, and the paths of a modern penal treatment will be made straight.[1]

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[1] Chute, Developments in the Probation Field in the *Proceedings of the National Probation Association*, pp. 14–23, 1928.

In spite of its defects, probation offers the best prospect for finding a way to stamp out crime. It intercepts the potential criminal before he has entered upon a course of serious crime. In a state like Iowa it has been estimated that 2,000 young people each year find themselves in prison for the first time. To prevent this annual increment from contributing its present quota of new inmates to our penal institutions is the function of probation. The increase of crime represented by our crowded prisons can only be reduced by stopping the supply at the source.

Review Questions

1. Explain the relation between suspended sentence and probation.
2. Why has probation had a slow growth?
3. Compare probation and parole.
4. Describe the origin of probation in Massachusetts.
5. Describe the origin of the juvenile court in Chicago.
6. What contributions were made by Judge Lindsey?
7. Compare the development of juvenile and adult probation down to 1926.
8. What is the significance of "the meanest thief in New York?"
9. Explain the work of the probation officer.
10. What is the effect of overloading a probation officer with cases?
11. How many cases should be assigned to a single officer?
12. Describe some of the results of probation in Massachusetts and New York.
13. What services are performed by probation officers?
14. Show that probation is a form of social case work.
15. Describe the New York experiment in probation.
16. What is the significance of the experiment?
17. What were some of the most important problems in the organization of the work?
18. Describe the method of social diagnosis used.
19. What conclusions were drawn from the results of the work?
20. How was the supervision of probationers conceived?
21. What four factors were responsible for the high percentage of success?
22. In what two states has been developed the most satisfactory organization of probation?
23. What are the duties of the State Probation Commission of New York ?
24. Describe the development of probation in Massachusetts.
25. Compare the changes in the percentages of persons placed on probation and the proportion committed to institutions.
26. What have been the results of probation in Massachusetts and New York?

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[1] Dean Pound in a foreword to article on Predictability in Criminal Justice in the *Harvard Law Review*, vol. XLII, p. 299.

27. What has Massachusetts demonstrated by the use of probation?
28. Why is there criticism of probation?
29. What are the reasons for the backward rural development of probation?
30. Why does probation offer the best prospect of reducing crime?

Topics for Investigation

1. Study the *Report of the Massachusetts Commission on Probation on an Inquiry into the Permanent Results of Probation.* See report as summarized in *The Survey*, pp. 231–233, May 15, 1924.

2. Study the results of probation in New York. See the *Journal of Criminal Law and Criminology*, pp. 138–147, May, 1923.

3. Study the New York experiment in probation. See Cooley, "New Goals in Probation," published by the State Probation Commission of New York.

4. Describe the recent developments in the probation field. See the *Proceedings of the National Probation Association*, pp. 14–23, 1928.

5. Study the comparison between probation and penal treatment in Baltimore. See the *Journal of Criminal Law and Criminology*, pp. 64–74, May, 1928.

6. Study the workings of probation in individual cases. See Gillin, "Criminology and Penology," pp. 813–819.

7. Compare the expense of probation with that of imprisonment. See Gillin, "Criminology and Penology," 825–826.

8. Indicate the principles of probation that have emerged from experience. See Gillin, "Criminology and Penology," pp. 831–841.

9. Study the statistics of the outcome of probation. See Sutherland, "Criminology," pp. 583–585.

10. Study the selection and training of probation officers. See the *Proceedings of the National Probation Association*, pp. 37–51, 1928.

Selected References

1. SUTHERLAND: "Criminology," Chap. XXIII.
2. GILLIN: "Criminology and Penology," Chaps. XXXIV–XXXV.
3. ROBINSON: "Penology in the United States," Chap. X.
4. STUTSMAN: "Curing the Offender," Chaps. XVII–XVIII.
5. MACBRAYNE and RAMSAY: "One More Chance," Chaps. I, IV, XX.
6. STERN: "A Friend at Court."
7. COOLEY: "Probation and Delinquency."
8. JOHNSON: "Probation for Juveniles and Adults."
9. Probation, *Bulletin* 8 *of the National Society of Penal Information*, December, 1923.
10. "American Prison Association, 1926," pp. 87–102, 166–172.
11. COOLEY: "New Goals in Probation."
12. *Proceedings of the National Probation Association*, 1928.

CHAPTER XVI

PREVENTION

Dr. George W. Kirchwey describes some of the efforts to reduce the amount of crime. Commenting upon them, he declared that:

> In none of the proposed reforms is there any recognition of the criminological principle of the individualization of treatment. Always the aim—the sole aim, is stark punishment—swifter and surer punishment—not understanding and correction. This has always been the way of the "amateur social doctors" as described by Professor William Graham Sumner: "They always begin with the question of remedies and they go at this without any diagnosis or any knowledge of the anatomy or the physiology of society."
>
> It would be absurd to deny the existence of a substantial relationship between law enforcement and crime, but it is a greater absurdity to accept the former as a sovereign remedy for the latter. There are incalculable elements in the warfare of organized society against its criminal elements. Even in the field of international war there are "imponderables" which count for more than the heaviest battalions. Assuming that we may by these projected methods make crime twice as precarious as it is to-day, would we, then, have made more than a dent in the present rate of criminality? I confess I don't know. No one knows. We are blind leaders of the blind. We must go on in our present course. But let us not blink the fact that in the vast majority of cases, the bandit of to-day is the juvenile delinquent of yesterday and the innocent child of the day before yesterday. Tomorrow it will be too late. *The only cure for crime is prevention.*[1]

We must catch the potential criminal at the earliest possible moment. Probably we ought to begin before he is born; perhaps start with the grandfather, as Dr. Oliver Wendell Holmes once declared we ought in beginning to educate an individual. *A scientific plan for dealing with crime would provide ample support for a program for the prevention of delinquency in place of building more jails and prisons.*

A comprehensive scheme for the prevention of crime and delinquency ought to include the following items: (1) preschools dealing with the behavior problems of the youngest children should be established; (2) the visiting teacher should be introduced into all our school systems; (3) the juvenile court and probation should cover the entire state instead of being limited to the cities and large towns; (4) adult probation should be extended and the judges, lawyers and people educated to understand its value and also induced to use it in all promising cases; and finally

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[1] KIRCHWEY, Breasting the Crime Wave, *The Survey*, vol. LVIII, pp. 122–123, Apr. 15, 1927.

(5) a state clearing house, such as that of Illinois, which would provide expert service for the courts and penal and correctional institutions. There is in this plan nothing entirely new and untried. Some parts are in actual use in different states. We could easily develop a more rational policy of dealing with crime and criminals, if we were willing to apply more intelligently the information and machinery which we have.

Social Disorganization

Social disorganization under modern industrial conditions is a source of much of the present-day crime and delinquency. Plans for dealing with individuals will fail ultimately unless we can develop methods for reducing social disorganization. The study of an individual case must include an analysis of the social situation in which the personality has been molded. We know that urban conditions produce more criminals than rural communities. Statistics of convictions by counties give us a rough measure of comparative criminality in the different sections of our states. We should have community case records to supplement the life histories of individuals since crime is always the joint product of an individual and a social factor.

Systematic preventive social work goes back to the social settlements as its inspiration and source. Toynbee Hall, the original English settlement, and Hull House, the best-known American settlement, were pioneer efforts to reduce social disorganization in London and Chicago. The fundamental idea was to draw the people together in a neighborhood center and to give them opportunities for wholesome social intercourse. In this way community solidarity would be built up. The settlement residents considered themselves an integral part of the neighborhood in which they lived. Their neighbors were regarded as social equals and their counsel was sought in all matters pertaining to the welfare of the neighborhood. In other words, the settlement undertook to develop in neglected parts—the slums and poorer sections of our cities—the primary type of society in which standards and ideals were generally accepted and consistent. Earlier conditions were based on primary contacts and isolation from other groups. Present-day society depends upon secondary contacts, resulting from large-scale communication and commerce. The efforts of the settlements are valuable as experiments even though they have not solved the problem of social disorganization.

Of wider significance have been the constructive efforts for neighborhood improvement of which the settlements have been the guiding spirit. The fields of education, recreation, law enforcement, civic progress, industrial welfare and municipal government have been profoundly influenced. Such activities as night classes for adults, vocational training, clubs, supervised play, forums and neighborhood meetings have owed much to the settlements. During their early years, they demonstrated the value of many progressive measures which were afterwards taken over by public and private agencies.

From the beginning the settlement leaders regarded social investigation as a necessary preliminary to plans for social betterment. Much of the early information concerning the congested life of large cities has been made available through the studies carried on by settlement residents. The skill and ability shown in interpreting the life of the people among whom they lived have been of the greatest importance to preventive work in the broadest sense.

If we are ever to cope successfully with the crime problem in a preventive way, we must attack it from the social side. We must reform the antisocial or unsocialized community, of which the antisocial individual is the product. The social settlement has furnished concrete examples of methods and accomplishments. Social legislation and social administration must supplement the best and wisest individual treatment. Miss Addam's question: "How have we let it happen that care for the moral safety of the oncoming generation is the latest of our civic undertakings?" must be answered. The majority of children and young people get into trouble in their search for amusement and we leave the business of furnishing amusements to the commercial interests that cater to the demands of the crowd.[1]

The interest of the public in crime is not primarily in its suppression. More and more in the complexities of modern industrial society secondary contacts take the place of the primary contacts of the neighborhood and the village. In primary association individuals are in contact with each other at practically all points of their lives; everyone knows everything about everyone else. In secondary association people are in contact at only one or two points. The artificial conditions of city life deprive persons of most of the natural outlets for the expression of interests and energy. Ultimately, adjustment is made by finding substitutes for primary responses in the mechanical and commercialized environment of the city.

In social work, politics and sport the individual is represented by professionals where formerly he participated in person. The great mass of men are no longer actors, but spectators. We sit on the side lines and watch the procession of life go by. We are waiting for something to happen to give us the thrill which will break the monotony which results from our few real contacts with the social activities of modern life. The restlessness, the thirst for novelty and excitement are to be attributed to the absence of the primary contacts of an earlier and simpler society This unrest has been capitalized by the newspapers, commercialized recreations, fashion and agitation. The sensations, the emotions and the instincts deprived of the satisfactions of primary group life are exploited in artificial ways.

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[1] For further information as to the work of social settlements see Woods and Kennedy, "The Settlement Horizon," Russell Sage Foundation, 1922; Woods, "The Neighborhood in Nation Making," Houghton, Mifflin Company, 1923; Woods, "Robert A. Woods," Houghton, Mifflin Company, 1929; Wilson, "Mary McDowell," University of Chicago Press, 1928; Barrows, "Neighbors All" Houghton, Mifflin Company, 1929.

Upon a society based more and more largely upon secondary contacts, there play an ever increasing variety of influences. The inevitable result is a growing social disorganization. Compare the conditions in New England in the early nineteenth century with the situation in the New England of the present day with its variegated foreign population, or compare the Concord of Emerson's day with New York and Chicago of the first quarter of the twentieth century. Not only have primary group influences been replaced by secondary associations, but there has been an enormous increase in the number of factors which influence society. No leadership is capable of comprehending all the multiple social forces at work, and much less is the possibility of exercising any real intelligent control over them. The Great Society of Graham Wallas has become a great leviathan. Its reaction to crime, like its response to other social stimuli, is largely unpredictable and uncontrollable. No social sensorium directs its movements.

Social disorganization and the absence of primary contacts form a basis for the cynical theory a Chicago police sergeant used to expound, although he was innocent of sociological information. He declared that crime was a luxury which a civilized people demanded in certain amounts, and which the police and newspapers are bound to furnish. Like gossip in a small town, the newspapers furnish the source out of which human nature draws the materials which go to make up the popular reaction to current happenings. Ever increasing rapidity of communication results in an approximation to primary contacts without the restraints that go with personal relations. How to use the new methods of communication in really social ways is the problem.

Material civilization has developed far in advance of our knowledge of human nature and social intercourse. We know enormously more than the Greeks did regarding the production and distribution of wealth. Our means of transportation and communication, our facilities for living and our control over the forces of nature have developed immensely during the last hundred years, but our knowledge of methods of social control has failed woefully to keep pace with this progress.

According to an experienced observer

> it is an American habit, when something goes wrong, to concoct a special plan for dealing with it—pass a law, form a committee, adopt a scheme. But after the law is passed the committee formed, the scheme in operation, our interest slackens until something reminds us that the troubles are not, after all, reme-

died; when we again pass a law, form a committee, adopt a scheme, which may again prove ineffective.

What we should do is to follow up our law, committee, or scheme, observe its operations, measure its results, and take our next action on the basis of past experience.

This is especially necessary in the field of social work. How many plans have been adopted on the assumption that certain procedures would bring desirable results! How few have been tested to see how far the assumptions on which they are based have been verified!

To undertake the measurement of the effectiveness of social treatment and to study the causes of success and failure is a task of enormous difficulty. It means the analysis of "an indefinitely numerous, heterogeneous and overlapping assortment of activities, ranging from simple acts which may be definitely described, named, and counted, to intricate series of processes, involving motives and attitudes, which defy analysis and seem completely to bar out counting."

Success in a social situation is "not a concrete thing, or condition, or circumstance, but an evaluation of a tangled complex of conditions and circumstances. Success in the individual life is not simply the sum of the favorable conditions experienced by the individual; it is the result of the action of the conditions upon him and his reaction to them. We must then take into account his nature and character as factors in the result, as well as the treatment administered."[1]

Teamwork in the Prevention of Crime

The fact that crime is left to popular opinion accounts for our failure to deal with it more effectively and our preoccupation with its spectacular results to the neglect of study of its sources. The problem is too complicated for laymen to handle and no one group of experts can solve it by themselves. "The psychiatrists and criminologists have obtained a foothold in the field, but their weakness arises from the fact that they are professionally limited to special phases of the subject and their methods and technique are so little understood by laymen that the public discredits whatever contribution these students have made as sentimental and protective of criminals." Crime does not spring from a single root and psychiatrists can do very little about it until they show others their responsibility for studying the problem and joining in a united attack on crime. *The great need is for teamwork in the prevention of crime.*

Preventive medicine has brought about the organization of the general public health movements to improve human environment so that disease factors may be eliminated. Public health activities have penetrated into related fields such as sanitation, industry, education, social welfare and housing. Alliances have been formed, and information as to the objectives of public health has been transmitted to other influential groups. The medical method of approach to general public health must be applied to the problems of crime. These problems must be rescued from lay control where there is little scientific insight, and studied without prejudice and the public educated to a more constructive point of view.

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[1] Claghorn, The Problem of Measuring Social Treatment in the *Social Service Review*, vol. I, pp. 181–182, June, 1927.

Even in the simplest behavior problem, the difficulty may have multiple roots. Take, for example, a symptom like stealing. A child "may steal because he has an unsatisfied craving for sweets, or because he has a desire for playthings or movies that other children, whom he knows, have, or because he has never understood the difference between his property and that of other people. Sometimes his gang steals and he follows them to retain his membership." In other words, the bad behavior may go back "to a physical condition, to a lack of normal opportunities, to a mistaken attempt to stand well with his companions, or to the poor example or the neglect of his parents." It is as unreasonable to treat stealing as something unique in itself as it would be to regard fever as a disease and not as a symptom. To understand a behavior problem we have to diagnose the symptoms exactly as a doctor diagnoses the symptoms of his patient. The method is medical even though the sources are found in such fields as "family relationships, school conditions and methods, neighborhood problems, industrial maladjustments, social difficulties and poverty."

The average community cannot meet the needs of preventive work like child guidance because it is not yet meeting the problems of health, schools, housing, unemployment and dependency, which are responsible for personality and behavior problems. The difficulties of any scientific approach to these problems are almost insuperable as long as they remain in the hands of lawyers and politicians who make fun of, or ignore, the arguments of scientifically interested people.

Coordination of effort is necessary to remove the prevention of delinquency from the field of popular experimentation and apply to it scientific methods of study and treatment. Studies have been made of the inmates of jails, reformatories and other penal institutions; psychiatric clinics have been established in courts, clinical work has been introduced into the schools and colleges and is penetrating industry. At the same time all of these efforts are rather isolated and do not form parts of a comprehensive and united plan to prevent delinquency. A really preventive program should begin with children before they are misfits in colleges and industry and before they are brought into court and located in prison.

A small number of clinical groups are intensively studying the causes and the prevention of delinquency. Dr. William Healy's pioneer activities in Chicago and his later work in Boston are probably . . .

the best examples of a small beginning, of staying with one's job, of studying and building and working quietly at certain cause and effect relationships and formulating constructive ideas about the study and treatment of juvenile delinquency. Dr. Herman Adler, by combining his work as director of the Institute for Juvenile Research in Chicago and his position of state criminologist, has exerted a tremendous influence over the work of public and private institutions and agencies in Illinois and has stimulated a great deal of interest elsewhere. Dr. Douglas A. Thom of Boston has made an important educational contribution by bringing to public attention the need of recognizing and properly handling the habit difficulties of younger children. His cases, while not obviously showing delinquency, undoubtedly are forerunners of more serious behavior problems and his work is essentially preventive. The Division on Prevention of Delinquency, supported by the Commonwealth Fund as a part of the National Committee on Mental Hygiene, has utilized some of the methods formulated by Healy, Adler and Thom in demonstrating child guidance work in cities throughout the country.

For the most part children's behavior problems originate in the home, school or community, and it is the interaction of influences encountered in these situations that complicate the problem of treatment. On the whole parents have little idea of the exercise of wholesome discipline and authority. Many parents consider their children's ideas and demands as trivial and expect them to outgrow these traits. "Spare the rod and spoil the child" has not been replaced in the family code by the recognition of the need to understand the child.

The teacher usually knows nothing about the child or about his home conditions. He must adjust himself to a miscellaneous group of thirty to forty-five other children. He may need individual handling, but he is required to conform to group action. Even if the teachers were trained in child psychology and mental hygiene principles, they could give little individual help because of inelastic curriculum and overcrowded classrooms. It matters very little whether the child is intellectually retarded or superior, the rigid discipline and course of study may be his stumbling block. If he avoids these obstacles, he may fail in making the necessary adaptations involved in adolescence or an unsuitable choice of occupation. Schools are largely without special facilities for determining special educational abilities or disabilities, vocational guidance or trade training.

If the child meets the home and school situations without difficulty, he must face the various sorts of dangers to be found in community life. Gang life and the lack of wholesome recreational facilities, blind-alley jobs in industry, poor housing and sanitation, unassimilated foreign groups and economic depressions may unfavorably affect the child's development either directly or through their effect on the family situation.

Any adequate program for the prevention of delinquency must include the home, the school and the community. The individual efforts working separately in each of these fields are valuable as experiments and tests of methods, but when it comes to dealing with the whole problem of prevention we are only scratching the surface because of the lack of any comprehensive program. There must be "fundamental modifications in educational methods, housing plans, social relationships, court procedures, industrial organization and other environmental conditions." Teachers, lawyers, business managers, sociologists, psychiatrists, and criminologists must get together and develop and carry through a really preventive program. Such a result is suggested by the appointment a few years ago of a joint committee, composed of educators, social workers, sociologists, criminologists, judges, psychologists and psychiatrists, by the National Education Association and the National Conference of Social Work "to study their common problems of preventing and treating juvenile delinquency."[1]

The need for teamwork in the prevention of crime is emphasized by the findings of the Subcommission on Causes and Effects of Crime of the New York State Crime Commission based on a study of the life histories of men committed to the correctional institutions of the state during the months of August and September, 1926. It was assumed that they represented "a typical cross-section" of the prison population.

As a result of the individual studies of 145 offenders, the following findings are presented:

1. There is no unit cause of crime. In every case studied there were many causative factors—bad or broken homes, poor neighborhoods, difficulties in school, drunkeness, feeble-mindedness, poverty, mental abnormalities, low moral standards and other factors that might result in antisocial conduct.
2. The majority of the men began their delinquent careers as children. They presented behavior problems in school and later became truants.
3. Experiences with the courts or commitments to public and private schools for delinquent children, jails, workhouses, or reformatories did not deter these offenders from committing other offenses.
4. All but 20 of the 145 offenders studied were employed in "dead end jobs"; they had neither the training nor possibly the mental equipment to hold positions of responsibility.
5. Community or neighborhood organizations such as settlements, community centers, "spare-time" organizations for boys, clubs, supervised recreation, did not, except in possibly five instances, touch the lives of these offenders, but commercial amusements, prize fights, gambling, cheap musical and vaudeville shows, social clubs, night clubs and cheap dances were the favorite recreational activities of the men studied.
6. A large percentage of these offenders, 55 or 37.9 per cent of the 145 studied, admitted the use of alcoholic beverages.

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[1] Adapted from Truitt, *Teamwork in the Prevention of Crime*, reprint of papers read in 1926 and published under the auspices of the Commonwealth Fund Program for the Prevention of Delinquency, November, 1926.

7. Obtaining a gun to use in unlawful acts was apparently an easy matter and in no instance in the cases studied was the person selling the gun discovered or prosecuted.

8. Except in a limited number of courts no adequate machinery was provided for obtaining social histories of the offenders and criminal records were seldom if ever checked or verified.

9. The social problems existing in the families of the men studied indicate the need for having attached to our correctional institutions well trained social workers with the right kind of personality, to act as liaison officers between offenders and their families and social agencies interested in the families of offenders committed to correctional institutions.

10. Social agencies, courts, probation departments and correctional institutions acted as isolated units in their contacts with these men.

11. Instead of receiving custodial care for the rest of their lives, a number of the 145 offenders studied who are habitual offenders, feeble-minded or psychopathic, and whose past records indicate their inability to adjust themselves to a normal life have been committed to correctional institutions for short terms and allowed to return to society.

12. No court dealing with adult offenders has attached to it a department of psychiatry. The number of offenders studied who are feeble minded or psychopathic indicates the need for having attached to the courts physicians and psychiatrists to make physical and mental examinations.[1]

These twelve findings show very clearly the lack of any concerted attack on the crime problem in the state of New York, and the situation in New York is duplicated all over the United States. Any really effective preventive program must somehow knit together the isolated agencies that are now trying to cope with crime and criminals. It is also interesting to note that these findings have grown out of the work of the Crime Commission which originated the famous Baumes laws, the basic principle of which was deterrence from crime by means of severity of punishment.

Campaigns of Education

Before the World War it would have been regarded as an almost impossible task to secure unity of purpose and action in the United States with its continental extent of territory, its millions of population and its large proportion of people of foreign birth and parentage. The difficult problem of organizing the national will was, nevertheless, accomplished.

The Committee on Public Instructions served as a national bureau of education in regard to war aims. Three chief means of publicity—the spoken word, the motion picture and the press—were used for reaching the people with the facts about America's entrance into the war, the character of the enemy, the consequences of defeat, the needs of the national government for the effective conduct of the war, and the duties of those who remained at home.

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[1] *Individual Studies of* 145 *Offenders by the Subcommission on Causes and Effects of Crime,* published by the Crime Commission of New York State, Albany, 1928.

Each of the agencies used played an important part in the adjustments necessary to place the country on a war basis, but the spoken word proved the most effective and persuasive in the mobilization of the national will. The government soon learned what Chautauqua leaders had long known, that for nine-tenths of the people facts that seem cold in print are lighted and warmed by a speaker face to face with an audience.

It was necessary to reach the non-reading masses—not only the immigrants unable to read English, but the native Americans, who never got beyond the headlines of the newspaper, and who pick up rumors readily and, like the proverbial village gossip, spread a mass of misinformation. For these classes direct appeal was employed by the Four Minute Men in the liberty loan campaigns, and the Red Cross and war work drives.

By October 1, 1918, the Four Minute Men constituted a force of 43,000 speakers working in 6,400 communities and reaching between eight and ten million persons a night. In addition, some 9,000 men of national prominence, representatives of the allied governments and groups of soldiers who had seen actual service, were at the command of the director of the speaking division, which furnished speakers for patriotic rallies, for conventions and mass meetings, where the problems before the nation were presented.

A by-product of the World War, this campaign of education may well be a model for what can be accomplished when the national will is sufficiently aroused. If the slogan of "making the world safe for democracy" can produce such results, why cannot the humanitarian plea for a scientific treatment of the criminal be put across? Such a campaign involves a thorough understanding of the nature of modern industrial society and a careful adaptation of methods to the needs of the situation. Instead of uncoordinated practical experience and observation, scientific social research ought to enable us to plan a campaign based upon the principles that are at the foundation of public opinion and public sentiment. How far we are from the possession of knowledge of such a kind, it is unnecessary to undertake to state.

Actually a criminal trial like that of Leopold and Loeb in 1924 constitutes a campaign of education comparable with the propaganda activities during the war years. In describing the broader aspects of the influence of the trial the *New Statesman* made some interesting comments.

The conduct and speeches of the lawyers were referred to as no less remarkable than the testimony, which was almost entirely of "expert" character. The proceedings may, therefore, be regarded "as a foreshadowing of the criminal law procedure towards which the civilized world is moving." The expert witnesses made up two antagonistic groups, those for the defense building up a vast structure of abnormal symptoms to prove the irresponsibility of the defendants, while the prosecution insisted that they were altogether responsible.

Mr. Darrow opened a new chapter in the development of the criminal courts. His witnesses featured the results of the researches of the new psychiatry. Much of it may have been superficial or merely absurd, but some portions were very interesting and significant. The prosecution attempted to ridicule the whole array of experts of the defense. The district attorney opposed these experts of the new psychiatry with others who presented the simpler theories of twenty years ago.

"The most charitable thing, to say" about the district attorney, according to this English critic, "is that he provided the psychiatrists with a subject of study not much less interesting than Leopold and Loeb. For three days, in the concluding stage, he harangued the court in a frenzy, having at intervals to appeal for a recess in order that he might change his clothes and be rubbed down with alcohol." The effect of this display was seen in the response of the crowd, which daily deluged the judge with threatening letters and made it necessary for him to go and come under heavy guard.

Darrow's method was that of a highly skilled criminal lawyer. He ranged over the whole field of discussion of free will and responsibility; he expounded at length his own philosophy of life, and made effective, practical use of the record of hangings in Illinois.

Judge Caverly took two weeks to consider his decision and pronounced sentence of imprisonment for life, with ninety-nine years added for kidnapping to provide against release after a few years. The sentence has been described as a victory for gold and as a triumph for the defense.

Such a "human document," its treatment by the press and the reaction of the public generally, gives us a sort of bird's-eye view of the actual situation in regard to criminal justice in the United States—a kind of cross-section of public opinion as it exists at the end of the first quarter of the twentieth century. Evidently the changing attitude toward crime is confined to the few. The problem of the immediate future is to educate the people to understand the ideas back of the scientific treatment of crime. The press and the public must understand these methods if they are to be of practical value in the administration of our courts. The purposes and objects of the juvenile court and the clearing house must be made clear to the popular mind. No substantial progress can be made without popular understanding and approval. Just as the juvenile court has come into existence and recognition since 1900, so, during the next twenty-five years, we can look forward hopefully to the extension of its methods to the courts for adults. The clearing house for adults will follow almost as a matter of course.

Humanitarian sentiments have developed most rapidly since democracy has become the dominant form of government. The disappearance of class lines has brought people closer together—has reduced social distance to use a sociological phrase. The suffering of our friends and neighbors affects us more directly than that of persons out of sight or beyond our own range of interest. Improved methods of transportation and communication have made the world much smaller than it was one hundred years ago.

All of these conditions have resulted in the development of humanitarianism. A great disaster arouses world-wide sympathy. Popular feeling is hostile to military enterprises because of the burden of suffering inflicted upon the masses of the people. Somehow we must find a way by which the humanitarianism of the age can be combined with its scientific spirit.

The Prison World, a journal of crime and corrections, formerly printed in Boston, for the Massachusetts Prison Association, made some suggestive comments upon the decision of the Leopold-Loeb case. It pointed out that those who, during the trial, clamored for the death penalty

> . . . have been obliged by Judge Caverly's courage to resign themselves to the more humane penalty of life sentence. Today, when passion has subsided and the spirit of revenge has gone back to slumber, how few there are who are not as well satisfied as if the murderers had been hanged? This ultimate resignation to life imprisonment in a case where there was an unprecedented cry for hanging, shows that we can be as well satisfied with justice which appeals to our reason as with that which appeals to our passions. This, indeed, is the one hopeful lesson of the whole case. Nothing could so surely prove to us that when we are revengeful we are brutal and that when we are reasonable we are humane. In other words, the one inspiring lesson we have all learned is that in the bottom of our hearts we are, all of us, more humane than we suspected.[1]

Examples of Systematic Preventive Work

The Juvenile Protective Association of Chicago.—The Juvenile Protective Association of Chicago grew out of the work of a committee organized to supplement the administration of the Illinois Juvenile Court law which went into effect in 1899. The law provided for the court and probation system, but made no appropriation for salaries of probation officers. The committee, known as the Juvenile Court Committee, raised a fund from which the salaries were paid. The law, also, forbade the detention of young children in jails and police stations, but provided no other place for their custody. The Juvenile Court Committee maintained for six years a detention home assisted by appropriations from the city and county.

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[1] *The New Statesman*, vol. XXIII, pp. 668–670, Sept. 20, 1924. Some of these matters were discussed by the writer in a series of articles published in *The Independent* during March and April, 1925.

In 1907 the Juvenile Detention Home, erected jointly by the city and county, was ready for occupancy. The officers are appointed under the county civil service law and the home is maintained entirely by public funds.

Finally the committee secured a law placing the probation officers upon the county payroll under civil service regulations. During eight years the committee raised and expended about one hundred thousand dollars for the salaries of probation officers and for the maintenance of the detention home. In 1909 the name was changed to the Juvenile Protective Association to carry on and develop the protective work and safeguard the interests of city youth, already started in several parts of Chicago by the Juvenile Protective League. The purpose of this work was to take additional preventive steps "on behalf of the children and young people of the city, and to remove as far as possible the temptations and dangers which environment, carelessness, and greed place about them."

In 1921 to 1922, 3,328 children passed through the Juvenile Court of Chicago and over 7,500 other young persons between the ages of seventeen and twenty-one passed through the municipal courts. Each year these are succeeded by others "inheriting the same tendencies, exposed to the same temptations, surrounded by the same dreary environment, often physically and mentally enfeebled by the results of neglect."

The Juvenile Protective Association has for its primary purpose to lessen this annual procession of delinquents through the courts; "to get at the child before he goes down, to influence his parents to raise the standard of the home, to better conditions in his neighborhood, to keep him from committing misdemeanors and crimes that take him into courts, *to use formative rather than reformative measures.*"

The association employs protective officers who act upon complaints received in regard to individuals and conditions. There is a special department on Juvenile Occupations, and all the officers are "constantly working on community conditions which affect children and young people, such as pool rooms, dance halls, disorderly hotels and rooming houses, questionable cabarets, penny arcades, theatres, boy gangs, street trades and all types of commercialized amusements. All of this work develops into attempts to secure effective enforcement of the law, remedial legislation, efforts to inform the public of conditions, for without public opinion and understanding an organization can do very little. The work of preventing delinquency and dependency and of checking crime is nonsectarian and city wide in its scope. Forty thousands dollars is spent annually to maintain this protective service in behalf of the youth of Chicago."

For the accomplishment of its purposes, the city has been divided into districts with a paid officer in each and with a local league of interested citizens, whose duty it is to know their own neighborhoods; to know the agencies that are producing juvenile delinquency, and to know how many vacant lots might be turned into gardens or playgrounds, how many churches have rooms that might be opened for reading or recreational purposes, and how many schools might be used as social centers.[1]

The Gary Schools.—The public school system of Gary, Indiana, presents one of the most ingenious attempts to deal with the problems of congested urban life and modern vocational demands. A type of school has been produced to meet changing social and industrial conditions.

> A new balance of school activities, an increased wealth of facilities, the opening-up of the opportunities to the younger children, the institution of a new kind of vocational training, the fusing of activities into an organic whole so that the school becomes a children's community, the correlation of school activities with community activities, and lastly, the application of principles of economics to public school management, which permit greatly increased educational and recreational facilities, not only for children in the schools, but also for adults—these are the features of the Gary School system that have aroused the enthusiasm of many educators, and made it one of the most visited and discussed school systems in the country.

In a report of the United States Bureau of Education in 1914, Commissioner P. P. Claxton recorded his belief that the Gary schools provide "for a more economic use of school funds, a fuller and more effective use of the time of the children, a better adjustment of the work of the schools to the condition and needs of individual children, greater economy in supervision, a better correlation of the so-called "regular work" and "special activities" of the school, a more practical form of industrial education, and at a cost less nearly prohibitive than is usually found in public schools."

Superintendent William Wirt, the originator of the Gary system, has stated the two fixed principles that he has followed in establishing work, study and play schools:

> 1. All children should be busy all day long at work, study, and play under right conditions.
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> 2. Cities can finance an adequate work-study-and-play program only when all the facilities of the entire community for work, study, and play of children are properly coordinated with the school, the coordinating agent, so that all facilities supplement one another and "peak-loads" are avoided by keeping all facilities of the school in use all of the time.

Mr. Wirt believes that by putting in the child's way opportunities for development, the child will be given a chance to select the activities for which he is best fitted, and will, consequently, exercise his native powers to their utmost possibilities. To accomplish this result, the school must provide, besides classrooms, playgrounds, gardens, gymnasiums and swimming pools, drawing and music studios, science laboratories, machine shops, and intimate and regular contact with supplementary activities outside the school. Such a school is based upon "play and exercise, intellectual study, special work in shop and laboratory, and social and expressive activity in auditorium or outside community agency."

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[1] *Twenty-first Annual Report of the Juvenile Protective Association of Chicago*, 1921–1922; Bowen, "Safeguards for City Youth at Work and Play," The Macmillan Company, 1914; Youmans, Kindergartens of Crime in *The Survey*, vol. LX, pp. 581–583, Sept. 15, 1928.

It is an essential feature of the Gary plan that the varied work be provided for all the children from the earliest years. The extensive equipment may be paralleled in other communities, but it is furnished only in the secondary schools. Since only one-fifth of the children who begin the American school ever reach the first year of the high school course and, since it is the high school, or the highest grammar grades, that have received most of the advantages of broadening educational opportunities, the great majority of school children leave school without contact with anything but the slightest intellectual training. "The ideal Wirt school contains in one school plant the complete school with all classes from the kindergarten through the common school and high school."

The Gary school aims to take the place of the old household and rural community life which provided for former generations the practical education of which the town and city child is deprived at the present time. Other social institutions like the church, Sunday school, public library and playgrounds cannot be depended upon to occupy the time of the children of a city for more than an average of a few minutes a day. The practical result is that the streets, the cheap theaters and other commercialized places of amusements have the children for many hours every day. "As a rule the streets and alleys have twice the time for educating the children in the wrong direction that the school, church, library and playground have for educating them in the right direction."

For these reasons the Gary school day is extended to eight hours. There is ample time for the intensive use of the school plant. Instead of using a part of the regular school hours for the special work and play activities, the Gary plan secures additional time by appropriating the "street and alley time" of city children. Every child has an hour of industrial work, an hour of play, an hour in the auditorium, an hour at luncheon, and four hours in academic class work. Many remain after school from choice and interest. The plan aims to provide a school life for the children for as long a time as they can be induced or encouraged to continue it. It seeks to employ the children's time with wholesome and satisfying activity. Saturday school, vacation school, and an all-year school are features of the Gary plan.

Superintendent Wirt points out that "the criticism of the modern public school is directed almost entirely at the helplessness of children who are attempting to enter industrial and commercial life from an exclusive study period of eight, twelve or sixteen years in the schools, and at the fact that the school is not able to get more than half its children beyond the sixth grade. Formerly, the school plus the home and small shop educated the child. The small shop has been generally eliminated and the home has lost most of its former opportunities. A much greater part of the education of the child must be assumed by the school. In place of the home, school and shop, we have the school and the city street educating the great masses of children. The school must do what the school, the home and small shop formerly did."

There may be technical flaws in the organization and supervision; classroom work may not be as good as it should be; but the Gary plan is a constructive attempt to break the lock step in education, and to make the public school a positive factor in the reduction of the social disorganization existing in our complex modern industrial communities. It recognizes the needs and undertakes to meet those needs by a reorganization of the school system. It takes the child from the streets and commercial amusements, provides opportunities for wholesome activities under trained supervision, offers general manual training for all children, and concentrates and distributes these different activities so that the same equipment accommodates a much larger number of individuals. The Gary school undertakes to deal with children before they have had a chance to become delinquent. Its widespread adoption in all our communities, urban and rural, would make largely unnecessary the work of such organizations as the Juvenile Protective Association of Chicago. Unfortunately, there is little reason for hope for such a consummation in the immediate future. A considerable number of cities have adopted many of the features, usually under another name, but our public school system generally continues to function upon the old "reserve seat" method. The curriculum and the buildings have been socialized, but the working plan has not been fundamentally altered. There is little effort to organize and provide for the whole life of the child—the school is set apart and, consequently, fails to socialize the child.[1]

The War Camp Community Service.—During the World War social workers were given an opportunity on a vast scale to show the value of their efforts. They were largely responsible for the commissions on training camp activities, appointed by the secretaries of war and navy. for the supervision of social and recreational work in the army and navy.

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[1] Bourne, "The Gary Schools," Houghton, Mifflin Company, 1916; Burris, The Public School System of Gary, Indiana, *Bulletin* 18, *of the U. S. Bureau of Education*, 1914; Dewey, "Schools of Tomorrow," E. P. Dutton & Company, 1915; Taylor, "Satellite Cities," Chaps. VI–VII, D. Appleton & Company, 1915.

The men in the national service had left their families, homes and friends, their clubs, churches and college gatherings, their dances, libraries, athletic fields, theaters and movies—all the normal social relationships to which they had been accustomed. The task of these commissions, therefore, was to reestablish the old social ties as far as possible, and to furnish a substitute for the recreational and social opportunities of home communities. They must socialize in the broadest sense the environment of military camps and training stations.

The work of these commissions was divided into three parts. One part was to exclude drink and vice from the vicinity of each camp and training station. Another part was positive—to turn out the men stronger in every sense, more fit morally, mentally and physically. The training camps represented a great educational enterprise. The third branch of the work consisted of "the mobilization of the social resources in the neighboring communities so as to be of the greatest possible benefit to the officers and men." This was the least visible, but in many respects the most interesting and most difficult part. The educational and recreational activities had a certain definiteness, but to make the communities adjacent to the camps suitable places for the men in their leisure time was a great undertaking. It involved social construction and reconstruction in comparison with which the actual material development of the cantonments was a relatively simple and definite undertaking.

The three great tasks of these training camp commissions covered two great fields of activity—one inside the camps and the other outside. Except where necessary they did not create any new machinery but made use of agencies already in existence. A large share of the club life and entertainment inside the camps was directed by the Young Men's Christain Association and the Knights of Columbus. The American Library Association provided a supply of books and reading facilities. The organization of the adjacent communities was delegated to the Playground and Recreation Association of America, the Traveler's Aid Society, and the Young Women's Christian Association. Every organization already at work and able to give assistance was brought in to help in its special field.

Besides the club life and entertainment inside the army camps, provision was made for singing, athletics, theaters, and educational work. These activities occupied the leisure time of the men in camp when the regular routine was broken on Saturdays and Sundays, and the daily free time from 5:30 p. m. until taps. Hostess houses were established to furnish a pleasant and respectable place for women who visited the camps in search of relatives, friends and sweethearts. When from thirty to sixty thousand young men were brought together in a training camp, there was nothing the majority of them were so anxious for as to see their families and friends. The hostess house was built near the main entrance or near the most centrally located railroad station. Some of the staff met the trains. Everything possible was done to preserve the links between the soldier and the world of which he was a part before he was summoned for military training. But for the men these visits could be only occasional. Most of their social life and their women friends must be found in the neighboring communities during their time off from military duty—hence the great importance of the mobilization of the resources of the near-by towns and cities.

This work was delegated to the Playground and Recreation Association of America. To all places located near camps, this organization sent out members of its staff with instructions to mobilize the hospitality of the community to aid the men of the army and navy in a systematic and efficient manner. Commercial clubs, rotary clubs, fraternal organizations and churches were instructed concerning what could be done to make their localities safe and helpful to the men in the camps.

The War Camp Community Service, the name under which this city and town work was organized, covered over two hundred communities, and at one time had over one hundred and thirty secretaries in the field linking up the interests of the soldiers and neighboring districts. Thousands of volunteer workers gave assistance. A sense of social responsibility was aroused in these communities.

To meet the reasonable demands of week-end leaves of absence of about a million and a half normal young men, living the rest of the time under strict military regulations, was the problem of the War Camp Community Service. A system was developed to meet these needs. Cards were obtained through the aid of the commanding officers of the camps giving information as to the name, church, fraternity, college, profession or business, special interests and favorite forms of recreation of each man. This data made it possible to bring persons with similar interests together. The social resources of a community could be used intelligently.

One of the first things done was to open clubs where a man's uniform was the only credential needed. Maps, guides and bulletins were published, giving information as to the community, its opportunities for sight-seeing and recreation, and making suggestions about what to do and where to go.

Another method for making the soldier's holiday pleasant and recreative was contained in the "take a soldier home to dinner" slogan. Within five blocks of a club in New York more than three hundred enlisted men were invited to private homes on Thanksgiving, 1917. On one Sunday in a single community five thousand men were taken home for dinner. A Chicago man entertained twenty-five men every Saturday afternoon.

Still another plan was used in many communities. New York City entertained fifteen hundred soldiers and sailors every night during the winter of 1917 to 1918 at New York's largest dancing place, where they could meet young women under properly regulated conditions.

The War Camp Community Service was based upon the knowledge that hours allowed for recreation are apt to be misused. In the modern city there are forces at work to undermine the health and morals of the men who are honestly and normally in search of amusement. The organizers of community service set up competitive forces with a view to giving the men healthful, interesting recreation while they were away from camp. "The way to overcome the temptations and vices of a great city is to offer adequate opportunity for wholesome recreation and enjoyment." If you want "to get a firebrand out of the hand of a child the way to do it is neither to club the child nor to grab the firebrand, but to offer in exchange for it a stick of candy."

In regard to the control of vice and drink in the neighborhood of camps, the government adopted a policy of absolute repression. A division of law enforcement was established, consisting of civilians and army and navy officers, mostly lawyers. Representatives of the division were stationed in the communities near the camps, and were instructed to keep the authorities at Washington informed of moral conditions, and also to bring the policy of the government to the attention of local officials. The cooperation of local officials was only obtained after some rather rigorous handling of certain local authorities, who either did not believe the government really intended to follow a policy of absolute repression, or who were ignorant of conditions in their home communities.

A study of social work in the military camps and in the communities adjacent to them compels attention to it as a unique and remarkably successful manifestation of social teamwork. It rested upon the principle so characteristically described by Kipling.

> It ain't the guns nor armament, nor funds that they can pay,
> But the close cooperation that makes them win the day;
> It ain't the individual, nor the army as a whole,
> But the everlastin' teamwork of every bloomin' soul.

If such methods were of value in the training of soldiers, why not apply them in times of peace? If they make better soldiers, why would they not make better citizens? Why not provide for the physical, mental and moral life of our citizens with the same purposes in mind and with the same broad point of view? Why did we wait for a war to do the things we ought to have done long ago, and which we know how to do, if only the emergency is great enough to compel us to use the inner social energies that ordinarily lie quiescent? If we can lavish billions of dollars to train men to fight because we must, we can more reasonably invest millions in training them for citizenship, and we ought to do it wisely and willingly. All of this constructive social work, unfortunately, was scrapped after the Armistice along with other war preparations. The return to "normalcy" meant a drifting back to a *laissez-faire* policy in systematic preventive work. The War Camp Community Service had too brief a period of activity to leave any permanent results. Like many other features of the World War experience of the United States, it has been forgotten. Interest in it will be revived probably only when another time of testing arrives.[1]

The three examples of systematic preventive work illustrate the ways in which organized society has attempted to meet the complex problems of social disorganization in modern industrial communities. The Juvenile Protective Association of Chicago undertook a relatively limited effort to prevent juvenile delinquency. The Gary schools tried to include in the public system of education not only the intellectual training of the children but also their recreational and social activities. The extension of the school program and the longer sessions reduce the free time remaining for unsupervised play and street life. The War Camp Community Service included the organization and supervision of the men who were being trained for military service. Its work comprised a special form of adult education and supervision based upon the war needs of the country, and upon the patriotic feelings of the people.

CRIME AS A SOCIOLOGICAL PHENOMENON

According to Prof. W. I. Thomas . . .

> the priests in Poland have a theory with regard to their peasant parishioners that there are no incorrigible individuals provided that the influence exercised upon them is skilful and steady and draws into play all of the social factors—familiar solidarity, social opinion of the community, religion and magic, economic and intellectual motives. And in his book "The Individual Delinquent," Dr. William Healy touches the problem on the same side in the following remark: "Frequently one wonders what might have been accomplished with this or that individual if he had received a more adequate discipline during his childhood." By our investigation of abnormal attitudes in connection with normal attitudes instead of treating them isolately, and by the recognition that the individual can be fully understood and controlled only if all the influences of his environment are properly taken into account, we could hardly avoid the suggestion that abnormality is mainly, if not exclusively, a matter of deficient social organization. There is hardly any human attitude which, if properly controlled and directed, could not be used in a socially productive way. Of course there must always

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[1] The story of the War Camp Community Service has been taken from an account written by the author and published in *The Iowa Journal of History and Politics*, vol. XVI, pp. 471–547, October, 1918. This study was made by using Camp Dodge near Des Moines as a concrete example of the work done in the training camps. See also Allen, "Keeping Our Fighters Fit," The Century Company, 1918, and Odell, "The New Spirit in the New Army," Revell, 1918.

> remain a quantitative difference of efficiency between individuals, often a very far-going one, but we can see no reason for a permanent qualitative difference between socially normal and antisocial actions.[1]

Sutherland declares that "no individual is at birth so set toward delinquency that he must inevitably be a criminal. The child is so plastic that a supremely efficient home and community could keep him from delinquency. On the other hand, no child, by nature, has such a law-abiding tendency that he could not possibly be made a criminal in a supremely bad home" and community. Home and community training include a vast amount of experimentation and trial and error. Family standards are counteracted by the outside influences to which the children are exposed. The children come in contact with a different religion, a different code of morals, and a different behavior pattern. In such situations maladjustments occur. The only solution for the problems of social disorganization is to reduce such disorganization. Effective, systematic, preventive work, such as is comprised in the examples just described, is the only remedy. The near delinquents can be and ought to be selected for special attention as early as possible in their careers, but individual treatment must be supplemented by community organization and community control. The problem of crime is a social problem arising in and because of social relationships. There is more crime in our modern urban communities than in earlier and simpler neighborhoods, because of the greater complexity of social relations and the consequent greater difficulty of adaption and adjustment.[2]

GANGS IN CHICAGO

Thrasher, in his very interesting and thorough study of gang life in Chicago, points out that "*gangland represents a geographically and socially interstitial area in the city*." By the term *interstitial* is meant "pertaining to spaces that intervene between one thing and another." In nature foreign matter tends to collect and cake in every crack, crevice and cranny—interstices. There are also fissures and breaks in the structure of social organization. The gang may be regarded as an interstitial element in the framework of society, and gangland as an interstitial region in the layout of the city.

> The gang is almost invariably characteristic of regions that are interstitial to the more settled, more stable, and better organized portions of the city. The empire of the gang occupies what is often called "the poverty-belt,"—a region characterized by deteriorating neighborhoods, shifting populations, and the mobility and disorganization of the slum. Abandoned by those seeking homes

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[1] THOMAS and ZNANIECKI, "The Polish Peasant in Europe and America," vol. I., pp. 79, 80, Alfred A. Knopf, Inc., 1927. The original edition was published in 1918.

[2] SUTHERLAND, "Criminology," pp. 129, 139, 623–630, J. B. Lippincott Company, 1924.

in the better residential district, encroached upon by business and industry, this zone is a distinctly interstitial phase of the city's growth. It is to a large extent isolated from the wider culture of the larger community by the processes of competition and conflict which have resulted in the selection of its population. Gangland is a phenomenon of human ecology. As better residential districts recede before the encroachments of business and industry, the gang develops as one manifestation of the economic, moral, and cultural frontier which marks the interstice.

According to Mr. Thrasher . . .

the gang in Chicago is probably the most important single factor—in that section of the boy population from which the majority of delinquents come—in determining how the needs for adolescent social adjustments shall be met. That approximately one-tenth of Chicago's 350,000 boys between the ages of ten and twenty are subject to the demoralizing influence of gangs suggests the importance of devising a practical program to redirect their energies into more wholesome channels. While current suggestions for the mitigation of crime include everything from high bail bonds to doing away with prohibition, very few of them sense the necessity of dealing with the problem at its source.

These gangs probably contribute a majority of the boys who pass through the juvenile and boy's courts. Some criminal gangs are direct continuations of adolescent groups that have drifted into crime. Court records and the associations experienced in reform and penal institutions tend to perpetuate the habits and customs of life begun in the gangs. Organized crime may be described as the result of a process of sifting and selection of which the final product is a criminal group. This residue may be regarded as constituting a considerable part of the underworld. "The gang forms in this social stratum for much the same reason that it forms among the free-floating boy population. It provides fellowship, status, excitement, and security in much the same way that the adolescent gang does for the gang boy. Unlike the juniors, however, the chief motive which usually prompts the member of the criminal gang to enter such a group is economic. He enters its fellowship with a much more definite conception as to what he is to derive from it—namely, profit and that profit from crime." The process again is interstitial, the natural filling up of fissures and breaks in the social organization overlooked and neglected in our methods of social engineering.

A survey of gangs in Chicago shows that the gang and its consequences constitute merely one of the symptoms of the disorganization resulting from rapid economic development and the introduction of great numbers of foreigners.

American industrial cities have not had time to become settled and self-controlled; they are youthful and they are experiencing the struggles and instability of youth. The apparent chaos in certain phases of their life may be

> regarded as a case of "cultural lag." Conditions are changing too rapidly to develop corresponding controls of an efficient type.
>
> Chicago both typifies and epitomizes these conditions . . . The result is a high degree of disorganization, manifesting itself in vice, crime, political corruption, and other social maladies." The real problem, then, is "one of reducing the disorganization incident to prosperity and progress to the minimum necessary for progressive reorganization.[1]

Chicago's problem is simply that of the whole country, only, as a great industrial and commercial center, its problem is a much larger and more complex task. Chicago is "the crime capital" for much the same reasons that it is a great industrial and commercial metropolis. Its gangsters, racketeering and bombing are just as natural products as its millionaires, its skyscrapers and its stockyards. The immediate need is to study the situation with the purpose of controlling and directing it. Constructive preventive work must be based upon accurate information. It must be organized teamwork and not merely sporadic attacks upon special phases or manifestations. An educational program like that of the Gary schools, supplemented by the protective activity of the Juvenile Protective Association and continued into adult life by services like those of the War Camp Community Service, would, in a generation, produce significant results. We need to apply the same genius to social research and social reorganization that we have applied to business and industry. We need a modern Aristotle to organize our social sciences, and Edisons and Carnegies and Fords to apply that knowledge.

Many years ago Joseph Lee, the president and founder of the Playground and Recreation Association of America, declared that "the boy without a playground is father to the man without a job; and the boy with a bad playground is apt to be father to a man with a job that had better have been left undone." The special application of this statement is obvious, but in its wider use it may well be made a text to emphasize the need for constructive preventive work in connection with the crime problem. Unless we provide for the social needs of our people, we shall still be confronted with the problems of crime, vice, vagabondage and abnormality due to bad environment. The Chicago crime situation is hopeless looked at from an individualistic and moral point of view. Its solution depends upon an approach from the angle of social institutions and social organization. To paraphrase Wells' statement—that the preservation of modern civilization is a race between education and catastrophe—we may say that the prevention of crime, or its measurable reduction, is dependent upon a race between social research and a growing social disorganization, resulting from the infinite complexities and confusions of our modern industrial world. All our efforts to deal intelligently with individual offenders will fail unless they are supplemented by careful studies of social conditions and social situations and unless we clearly recognize that crime is a *sociological phenomenon.*

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[1] THRASHER, "The Gang," pp. 22–23, 412–420, 487–489, The University of Chicago Press, 1927.

Review Questions

1. Why is prevention the only cure for crime?
2. Why is a program for the prevention of delinquency more scientific than the building of more jails and prisons?
3. What should be included in a comprehensive scheme for the prevention of crime?
4. Explain the relation of social disorganization to crime and delinquency.
5. Describe the relation of the social settlements to preventive social work.
6. Why is there so much social disorganization at the present time?
7. What is the importance of measuring the results of social work?
8. Explain the need of teamwork in the prevention of crime.
9. Show how the findings of the commission on causes and effects of crime of New York indicate the need of teamwork.
10. Describe the campaign of education during the World War.
11. Compare the trial of Leopold and Loeb with the propaganda during the World War.
12. Describe the work of the Juvenile Protective Association of Chicago.
13. Describe the Gary schools.
14. Describe the work of the War Camp Community Service.
15. Explain how crime is a sociological phenomenon.
16. What does Thrasher mean by *interstitial*?
17. What is the importance of gangs in Chicago in relation to delinquency and crime?
18. How do you explain their existence in Chicago?
19. What can be done to remove the underlying conditions?
20. What is the importance of reducing social disorganization?

Topics for Investigation

1. Discuss the program for prevention proposed by Sutherland in his "Criminology," Chap. XXV.
2. Discuss the program for prevention proposed by Gillin in his "Criminology and Penology," Chap. XXXVI.
3. Study the work of social settlements. See Woods and Kennedy, "The Settlement Horizon."
4. Study the problem of measuring social treatment. See the *Social Service Review*, vol. I, pp.181–193, June, 1927.
5. Study teamwork in the prevention of crime. See Truitt in papers published by the Commonwealth Fund and *Individual Studies of* 145 *Offenders* by Commission on Causes and Effects of Crime of the New York Crime Commission.
6. Study the Leopold and Loeb case as to its influence upon public opinion as to the treatment of criminals. See the *Journal of Criminal Law and Criminology*, vol. XV, pp. 347–405, November, 1924.
7. Study the work of the Juvenile Protective Association. See reports of the association, *The Survey*, vol. LX, pp. 581–583, Sept. 15, 1928, and Bowen's "Safeguards for City Youth at Work and Play."
8. Study the work of the Gary schools. See Bourne, "The Gary Schools" for references.

9. Study the work of the War Camp Community Service. See Allen, "Keeping Our Fighters Fit," and Odell, "The New Spirit in the New Army."

10. Study the gang problem in Chicago. See Thrasher, "The Gang.'

11. Discuss the relation of recreation to delinquency. See Truxal, "Outdoor Recreation Legislation and Its Effectiveness," Chap. VI.

12. Discuss the relation of delinquency to the community situation in which it occurs. See *Proceedings of the American Sociological Society*, vol. XXII, pp. 174–179, 1927.

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3. PARSONS: "Crime and the Criminal," Chap. XIX.
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21. SHAW: "Delinquency Areas."

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